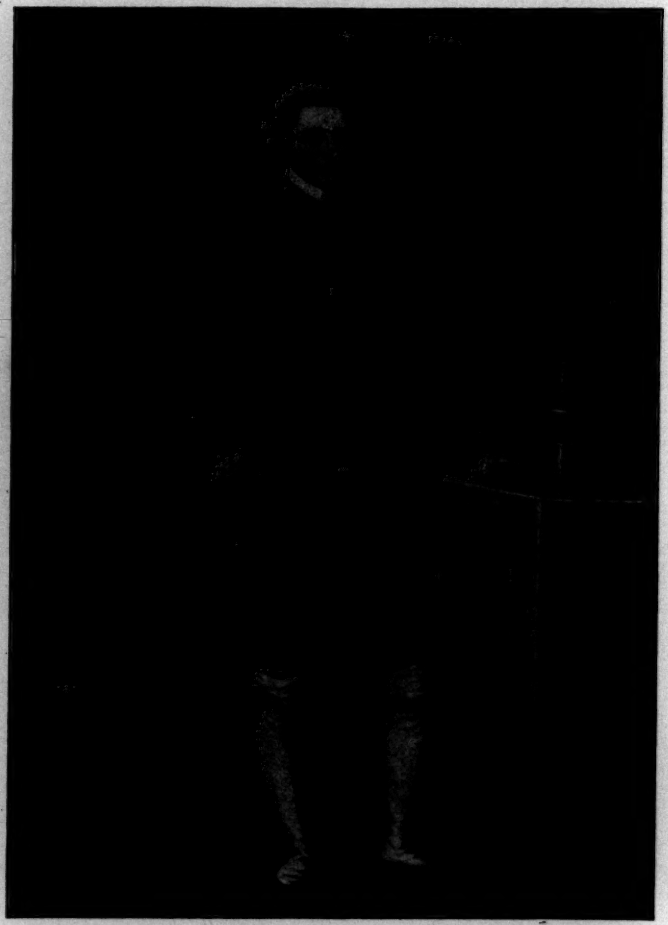
LIFE AND ADMINISTRATION

OF

SIR ROBERT EDEN.



SIR ROBERT EDEN (1741-1784).

GOVERNOR OF THE PROVINCE OF MARYLAND 1768-1776.

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IN

HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor.

History is past Politics and Politics are present History.—*Freeman.*

Life and Administration

OF

Sir Robert Eden

BY

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Life and Administration of Sir Robert Eden.

CHAPTER I.

Ancestry and Early Years.

The Edens' motto is "*Si sit prudentia*," a wish well satisfied in the life of the subject of this narrative, whose distinguishing traits were prudence and foresight. He came of good North Country lineage. Robert Eden's great grandfather, who bore the same Christian name, was created a Baronet. His son, John and his grandson, Robert both succeeded to the honor, and both sat in Parliament for Durham. The last-named, on May 8, 1730, married Mary, daughter of William Davison, Esq., of Beamish, County Durham.[1] He was then but twenty years of age, his wife but seventeen. To this couple were born eight sons and three daughters. It was a remarkable family. The eldest son, John, inherited the baronetcy and the family seat in Parliament; the second son, Robert, was to show his ability in trying circumstances in Maryland; the third son, William, was one of the Peace Commissioners to America in 1778, and was raised to the peerage as Lord Auckland; the fourth son, Thomas, was auditor of Greenwich Hospital and father of an admiral in the navy and a lieutenant general in the army; while the youngest son, Morton, was the skilled diplomatist, who was raised to the peerage as Lord Henley. Of

[1] Gents. Mag. IX. 272.

the three daughters, Catharine, the second in age, married the Most Reverend John Moore, Archbishop of Canterbury.

As the father died early, it is probable the children owed much to their mother's care. Robert, the second son, was born[1] on September 14, 1741. We are unable to ascertain where he obtained his education. Wherever it was, his school days did not last long, though they enabled him to acquire an excellent knowledge of Latin and a pleasant English style in writing. When he was not quite fourteen years of age his father[2] died, and before he was sixteen he obtained

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[1] Gents. Mag. XIX. 272. I desire to express my thanks to Rev. Robert A. Eden, Vicar of Old St. Pancras, London, a great grandson of Gov. Eden, for cordial interest and for much valuable information.

[2] Gents. Mag. XXV. 333. He is buried with his wife in the churchyard of St. Helen's, Auckland, just outside the east wall of the chancel. Their tombs bear the following inscriptions:

Here lies the Body
of Sir Robert Eden, Bart.
The only son & heir of Sir John Eden
of West Auckland Bart,
By Catherine Daughter of Mark Shaftoe
of Whitworth Esq.
He married
Mary daughter of William Davison
of Beamish Esq.
By whom he had issue
eight sons and three daughters all living
at the time of his death.
Departed this life on June 26th 1755
In the thirty seventh year of his age
Greatly lamented by his family and mournful widow
Who when she dies intends her ashes shall
rest in the same grave.

Here also lies the body
of Mary Eden
wife of the said Sir Robert Eden, Bart.
who died January 30th, 1794 in the
74th year of her age.

a commission in the army, on February 4, 1757, as Lieutenant Fireworker in the Royal Regiment of artillery.

On May 8, 1758, he was promoted from cadet to ensign in the Coldstream Regiment of Footguards,[1] and in that position he embarked with the second battalion of that famous regiment in July, 1760, for active service in Germany, where the seven years' war was then raging. He was promoted to the position of Lieutenant and Captain in the Coldstream Guards on September 23, 1762, and returned with his regiment to London at the conclusion of the war. His services had been doubtless commendable, but no especial record of them remains.

The frontispiece is copied from the only known likeness of Eden, and shows him at this period of his life dressed in the uniform of the Coldstream Guards—scarlet coat, with dark blue, almost purple, facings, gold buttons and edgings, crimson sash over right shoulder, white lace tie and ruffles at the wrist, buff waistcoat and breeches, dark garters, and white long stockings or gaiters. (The original of this portrait is a small oil painting, about fourteen inches high, by an unknown artist, in the possession of Mr. Frederick Morton Eden, of London, who kindly had it copied for this work.)

During the years now spent by him in England, he wooed and won the Hon. Caroline Calvert, after whom Caroline County, in Maryland, is named. She was the daughter of Charles, fifth Lord Baltimore, and sister of Frederick, sixth and last Lord Baltimore. The alliance with this family determined the whole future course of Eden's life, and brought him into that connection with Maryland in which he achieved his chief reputation. He was married[2] by Rev. Gregory Sharpe, curate, at St. George's, Hanover Square, London, on April 26, 1765, Lord Baltimore, the bride's

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[1] Information furnished by Col. J. B. Sterling, of the Coldstream Guards.

[2] Gents. Mag. XXXV. 247.

brother, and M. Shafto signing the register as witnesses. To Sir Robert Eden and his wife were born three children. The eldest was Sir Frederick Morton Eden,[1] the distinguished economist, who was born on June 13, 1766, and died on July 14, 1808; the second was Major-General William Thomas Eden,[2] who was born April 13, 1768, and died May 24, 1851; while the third child, and only daughter, was Catherine Eden, born in Annapolis, June 6, 1770, and died April 9, 1835, having been twice married. Shortly after the marriage Eden began to gain material advantages from his alliance with the Baltimore family. From the revenues of the province of Maryland he was granted by his brother-in-law an annuity of £100, payable semi-annually. This annuity continued until Eden's appointment as Governor.

CHAPTER II.

The Beginning of the Governorship.

In 1768 Lord Baltimore, who was an absentee landlord, never visiting his palatinate, and either squandering the great revenues he received from thence in debauchery, or expending them in European travel, determined to appoint a new Governor in place of Horatio Sharpe, who had ruled most excellently in Maryland during the trying times of the French and Indian wars. As the successor in this important and lucrative post, he selected his brother-in-law, Capt. Robert Eden. Captain Eden accepted the position, and resigned his commission in the Coldstream Guards on July 14, 1768.

The appointment was a clear case of nepotism, and I regret to say that Eden seems to have done all in his power

[1] Gents. Mag. XXVIII. 1178, Dict. of National Biog.

[2] Annual Reg. 1851. Sharpe Correspondence III., pp. 261, 321, 350, 384. In 1768, we hear of Eden introducing to Baltimore a friend who was desirous of obtaining a Maryland parish. op. cit. 475.

to supplant Sharpe. Though the trouble Sharpe was having with that "reverend scoundrel," Bennet Allen, may have partly alienated Baltimore from his Governor, this is not assigned as a reason for the transfer of the office to Eden. In the official[1] letter sent by Baltimore's secretary, Hammersley, to Sharpe, the cause of Eden's appointment is thus stated: "A similitude of pursuits,[2] joined to his Lordship's partiality for his sister, naturally led him to entertain hopes of one day succeeding your Excellency; hitherto his Lordship has resisted every temptation except that superior one which has so attached him to you. But the workings of nature, the merit of his brother-in-law to himself particularly, and the solicitations of relatives have at length prevailed and forced him to take the painful resolution of delegating the succession to Mr. Eden." The whole letter shows clearly Hamersley's disinclination to send Sharpe the news, and we may well believe Baltimore himself had only yielded to pressure. Sharpe had been a thoroughly honest and able servant, and had been successful in remitting the revenues to the absentee landlord. Baltimore might well have doubted whether the untried young man, whom he would send out, would be as successful a Governor as the one who had, for fifteen years, given proof of "unwearied zeal to promote the welfare of his Province."

Sharpe took the news in the best possible manner,[3] and wrote, even before receiving Hamersley's letter, that he hears Captain Eden has been appointed Governor, and is expected in Maryland before the end of the year. He thinks it strange that Eden, "or his lady at least," did not prefer "a summer passage" and "put off their voyage till next spring," but he is ready to remove to his "farm at a moment's warning, so that the house I live in might be ready for the recep-

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[1] Serj't's Inn, London, July 20, 1768. Sharpe Correspondence III., 515.

[2] Not a compliment for Eden.

[3] Sept. 15, 1768. Sharpe Correspondence III., 529.

tion of my successor's family." He closes his letter with the pleasant wish that Eden and his wife may "be as happy in America as they wish to be, and may Maryland flourish and prosper more under my successors than it has under mine or the administration of my predecessors."

In a second letter to Hamersley, written after the official news of Eden's appointment had reached him, Sharpe states that the reason given for the appointment is "very sufficient and satisfactory," and throws a curious light as to the way in which Baltimore and his ministers thought of Maryland as their private possession, by adding that Eden's expectations that the family into which he had married would provide well for him were "natural and extremely satisfactory."[1] In a third letter Sharpe adds further expressions of goodwill towards the new Governor,[2] and we may be sure that Eden found in his predecessor a wise and sagacious counsellor, whose advice would prevent him from mistakes at the beginning of his official career.

It was some time, however, ere he left for Maryland,[3] in which Province he did not arrive until June, 1769. The instructions given by the Crown and by Lord Baltimore to Eden are extant, and though, of course, similar to those given to other Governors in like circumstances, they are so important for our purpose as showing us what were the duties of the colonial Governors, and what functions Eden had to perform, that it is worth while to tarry for a short time over their main provisions.

The instructions given by the Crown deal wholly with revenue matters. First, as of most importance to the home

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[1] Sharpe Correspondence III., 534, 537.

[2] Oct. 30, 1768. Sharpe Correspondence III., 550, vide 557, 563. A letter of Hamersly to Sharpe dated July 20, 1769 (ob. cit., 563), renews the assurances of satisfaction with Sharpe's administration and states that it is supposed that Eden has arrived in Maryland.

[3] Commission of Governor was dated Aug. 1, 1768, and on Dec. 27, 1768, Eden took oaths before privy council. Aug. 12, 1768, he gave security for due execution of his office.

government, come directions to the new Governor to learn the laws of plantation trade and swear to obey them, to see that the naval officers give security to the Commissioners of Customs, and that the latter give a certificate thereof to him; that the naval officers and collectors reside in the same ports or towns; that the navigation laws be observed, and that bonds are taken from ships that they will obey the laws.

He is to examine ships' certificates and bills of lading, to look to the security of bonds and see that they are regularly discharged, to watch that the payment of duties does not free vessels from carrying their goods to Great Britain according to law, to transmit quarterly to England a list of the ships and vessels trading in the colony, and to send to England and to the collector of the port to which every vessel is bound copies of an invoice obtained from her master. If a vessel breaks the navigation laws, he is to have it seized. All fraud and use of forged papers are to be prevented, as far as possible. Laws, usages or customs repugnant to the laws of the United Kingdom are not to be made or allowed by him, but rather are to be declared void. The Governor must aid the collectors of customs and other officers, get the legislature to pay for making copies, for the principal officers of the customs, of all acts and papers which relate to their official duties, and see to it that these officers have free inspection of all public records. In cases of forfeiture for breach of revenue laws, the Governor must watch that the jury be sworn from those born in the royal dominions; he must aid the receivers of the tax on the seamen's wages for the benefit of Greenwich Hospital, must prevent smuggling, help the revenue officers in seizing smuggled goods, and prosecute smugglers. Places of trust in the courts of law, or in what relates to the treasury, he is directed to take care to keep in the hands of native-born subjects of the King, and if he discover anyone claiming property by charter or letters patent in any island or tract of land in America, and endeavoring to dispose of it to any but a native-born subject of the Crown, he must inform the British Government of it.

Correspondence is directed to be carried on by him with the commissioners of trade, telling them what is needful for them to know. Especial pains is to be taken that no wool is to be exported. No foreign-built ship is to be allowed to trade in Maryland, unless she show a British register, of which a duplicate must be sent to England. The Governor is to give attention that vessels taken at sea on letters of marque have especial register without change of name.

If there be indigo plantations in Maryland, the Governor must enforce the indigo act and transmit information to England from time to time concerning these plantations and the amount of foreign indigo imported.

The act requiring tobacco to be imported in casks, etc., holding forty-five pounds each, must be published by the Governor. He must prevent illicit trade with the East Indies or transgressions against the monopoly of the East India Company, as well as the landing of any ship, not that company's, laden with East India goods, unless it be a foreign vessel in distress and bound for the West Indies. Appeals to England by customs officers shall be allowed by him. These officers must be allowed also by the courts to plead the general issue, when sued, and to have all privileges they would enjoy in Great Britain. They must not be forced to pay heavy court fees, nor to serve on juries, nor to take parochial offices, which may hinder them exercising their duty, nor appear in arms, save in absolute necessity. The Governor must have execution suspended until the result be known, when an appeal is taken to Great Britain, and insist on security being given by the appellee to pay damages, should he lose his suit.

If the officers of customs are remiss, the Governor must suspend them. He must send word to England, from time to time, of all his proceedings, and he is warned that neglect to fulfil these numerous provisions may bring about the forfeiture of his bond and of the charter of the province, and may lead to heavy fines.

Lord Baltimore's instructions to his brother-in-law are

contained both in the commission and in a special paper addressed to Eden. The commission stated that, with the approval of George III, Eden is appointed Lieutenant Governor and Chief Governor of the provinces of Maryland and Avalon in America, and also commander-in-chief, both by sea and land, of all the forces within the limits of the said provinces, or the islands, territories and dominions thereunto belonging. He is further to appoint and remove officers; summon, prorogue and dissolve the General Assembly; with the Assembly to make needed laws, neither repugnant to the laws of England, nor prejudicial to the Proprietary's prerogative; to transmit such laws to Lord Baltimore for approval; to carry on the government in general, and to exercise all the powers of the Proprietary, as he would if present. All officers are ordered to obey Eden.

The separate paper of instructions bids Eden call together the Council of State immediately upon his arrival, show them his commission and instructions, and take the required oaths. He should then call together the Assembly, read them Baltimore's speech, and see to the passage of proper laws, reserving the veto power over all such to the Proprietary. In case of vacancies in the Council, he is to nominate to Lord Baltimore a suitable person, but is not to fill the vacancy himself, unless the Council fall below six in number. Then he may fill up the number, so as to make it seven, though Baltimore may even then reject the Governor's nominees. The number of councillors is not to be increased or diminished by the Governor, and those nominated by him thereto, as well as to all other offices, must be men "of good life, and well affected to our Church and State as by law established, and of good estates and abilities, and not necessitous persons or much in debt." If any councillor leave the province for above a year without permission, the Governor must declare his seat vacated. Eden must act according to the charter, "doing impartial justice unto all persons, His Most Sacred Majesty's subjects and our faithful tenants, committed by our power to your care." He must be

careful to discountenance any law of the Provincial Assembly introducing the Statutes of England in gross; or any disestablishing the church or dividing parishes without the incumbent's consent; or any private act passed without notice given to those concerned and without the insertion in the act of a clause saving the rights of the Proprietary and all not named in the act; or any act of unusual or extraordinary nature, without a clause suspending its going into force until Baltimore's pleasure concerning it be known; or any act comprehending several different subjects; or one containing a subject foreign to the title of the bill. He was to see that no act be suspended, altered, revived, confirmed or repealed by general words; that no act concerning paper currency be passed, unless in accordance with the act of Parliament on the subject; that "God Almighty be devoutly and duly served throughout your government, the Book of Common Prayer, as by law established, read each Sunday and holiday, and the blessed sacrament be duly administered according to the rites of the Church of England;" that churches already built be well and orderly kept, and that the Proprietary be notified of all vacant livings, so as to be able to fill them. In emergencies, Eden must use his discretion, transmitting a report of his action. All appointments made by the Governor to official places are to be only provisional till the Proprietary's pleasure be known. Copies of the proceedings of Council and Assembly must be sent to England, and all unabrogated instructions to prior Governors obeyed. In case of Eden's death or absence from the province, the eldest Councillor is to take the office of the Governor, but must not assent to any act save such as may be immediately necessary.

The responsibility of carrying out these instructions was given to Capt. Robert Eden, at that time not twenty-eight years of age. He had, however, but little of the rashness of youth, and was well fitted to fill the post to which he had been assigned. He was "easy of access, courteous to all, and fascinating by his accomplishments."

Governor Robert Eden, with his wife, his two infant sons and his attendants, arrived at Annapolis[1] on the ship Lord Baltimore on June 5, 1769. On coming to anchor she fired seven guns, which were answered by an equal number from the shore. On landing, the new Governor was met by the members of Council then in town, and by many citizens, while all the cannon at the battery were discharged.

The day after his arrival in Annapolis, Eden took the oaths of Governor and Chancellor, received the great seal from Governor Sharpe, and issued a proclamation, announcing his arrival as Governor and continuing the previous officials till further notice. On June 12 he filed with the Council his various instructions.

On assuming the reins of government, he found affairs in a troublous condition. The colonies had never recovered from their vexation at the passage of Townshend's revenue acts, and the Virginia House of Burgesses had just shown such an independent spirit that even the popular Lord Botetourt had felt obliged to dissolve them and send an express to England with an account of their action.

Their resolutions claimed the sole right of colonial taxation for the colonial legislature, and that all trials should take place in the colony in which the alleged offence was committed, and asked that the other colonies pass similar resolutions and join in a petition to the King. Eden feared that, if the Maryland Assembly should meet at the time to which they had been last prorogued, they would be "influenced by the zeal and example of their neighbors, animated by their ideas of liberty, and, perhaps, by an opinion of their honorable connection with Virginia," they might be led thus to pass similar resolves, which would drive Eden "to the necessity of dissolving the Assembly." From this measure he was very "averse," "especially in the beginning" of his administration. On June 21 the Governor sent to Lord Hillsborough his first official report, telling him how he solved

[1] Ridgely, Annals of Annapolis, p. 141, Md. Gazette.

the difficulty, and showing that he had already gotten a clear comprehension of the state of affairs in the province. He summoned the Council of State, stated to them his views in writing, took their advice and then "issued a proclamation, proroguing the Assembly to Tuesday, the 14th November." He referred to it in this pleasant, humorous way: "I hope that their Passions against that Period may, as well as the weather, be cooler than they are at present, though I beg leave to assure your Lordship, they are not so violent as I expected from some accounts I had heard of them." We see in this first letter that Eden assumes that role of apologist for the people of his province, which he ever retained in his letters to England. He also hoped to get instruction from home before the prorogued Assembly could meet, and felt that the postponement could occasion little inconvenience to the province. There were no bills which would expire in the interim, and an earlier meeting would have really been less convenient to the planters; "for, though their corn harvest is generally over before the middle of July, yet, as the Tobacco and Sowing Seasons would have interfered, a Prorogation in the middle of the Session would have been necessary on that account, had nothing else required it."

The Virginia resolutions were not the only cause for uneasiness to the new Governor. Within a short time after the appearance of his proclamation assuming the government of the province, came one of the forerunners of that convention of the freemen of Maryland, which should succeed him. On June 20, 1769, several of the counties having previously passed resolutions for no importation of "British superfluities," and the province in general being invited to send delegates to a convention by the people of Anne Arundel County, there was held at Annapolis a meeting of gentlemen from the various counties, which passed sweeping resolutions, to have force throughout the province. These resolutions specify with considerable minuteness what goods may not be imported, direct tradesmen not to raise

their prices in consequence of the diminished stock of goods, and forbid anyone to kill lambs or buy goods from an Englishman. The province must obey these resolutions of this extra-constitutional gathering, so long as the British laws taxing the colonies should be in force, or until a meeting of the whole province should rescind the resolutions Three days after the meeting Eden transmitted the resolutions to Lord Hillsborough, and stated that, considering the meeting a private one, he took no notice of it. He had not yet learned the stubborn nature of the provincials, nor did he fully appreciate the meaning of those resolutions.

For a time, however, political affairs went with comparative smoothness. The people were specially happy to have a representative of the immediate family of the Lord Proprietary among them. One of the lyrists of the day was inspired to fill a column of the *Maryland Gazette* with a poem beginning, "He comes, see Eden comes! Auspicious day,' and closing as follows:

> "Long as, or grass shall grow, or river run,
> Or blow the winds, or shine yon glowing sun,
> May Eden and his sons here reign and stay.
> Themselves as happy as the realms they sway."[1]

The justices of Talbot County presented the Governor an address, to which Eden answered that, "prompted by my inclination as well as by the emulation inherent in every soldier's breast, I shall venture upon the arduous task of endeavoring to equal my predecessor in the execution of the trust reposed in me."[2]

The generous, open and social disposition of the new Governor soon won him friends. He entered heartily into the life of the provincial gentry and shared all their pleasures. Soon after his arrival he was chosen to act with his predecessor, Governor Sharpe, as one of the stewards of the An-

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[1] Md. Gaz., Aug. 3, 1769.
[2] Md. Gaz., Aug. 17, 1769.

napolis Jockey Club,[1] and in the fall races at Annapolis in 1769 he entered his horse Regulus for the Ladies' Purse.[2] This he failed to win, as the steed threw his rider and was distanced in the first heat.

His residence[3] was the house originally built by Edmund Jennings, Esq. This Eden purchased for his official mansion, and added to it the wings and the long room. After serving for a century as the executive mansion, the house was bought by the Federal Government some years since, and is now used as the Naval Academy Library. About it was a garden,[4] not extensive, but disposed to the utmost advantage. Its centre walk extended to a small round mount, close to the Severn river. From this elevation there was an extensive view of the bay and the adjacent country. In this residence William Eddis found him, when he disembarked at Annapolis on the morning of Sunday, September 3, 1769. Eddis, whose "Letters from America" are one of the most valuable sources for the history of these times, came to Maryland to become a public official, and found in the Governor a faithful friend and protector. Apparently, he had never met Eden before this time, yet was greeted with a reception equal to his "warmest wishes."[5] Eden received him with open and friendly deportment, and at once invited him to meet a party at dinner, after the church service. At that time, quite a company of "persons of the highest respectability" assembled, and Eddis found himself treated "with the utmost kindness and cordiality," assured of the Governor's "strongest disposition to advance his future prosperity," and invited to this hospitable table at any time

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[1] *Maryland Gazette*, Mar. 18, 1770.

[2] *Maryland Gazette*, Oct. 26, 1769.

[3] The Assembly allowed him £80 for house rent. Proceedings of 1770, p. 268. Taylor's Hist. of Annapolis, p. 16.

[4] Eddis, Letters from America, p. 17.

[5] Eddis, p. 8.

convenient to him.[1] Such affability was characteristic of Eden, and it was not confined to mere words, so that Eddis, when he published his letters in 1792, found no need to moderate the enthusiastic expressions he had put on paper at his first meeting with his patron.

Among the prominent men of the province, who speedily became warm friends of Eden, were John Beale Bordley, Judge of the Admiralty Court, whom Eden visited several times in 1771 and 1772 at his plantation on Wye Island, and with whom he occasionally corresponded,[2] and Col. William Fitzhugh, of Rousby Hall, in Calvert County. Colonel Fitzhugh, who had served in the British army in the Carthagena expedition, and was a British half-pay officer until he threw up his commission in June, 1776, rather than fight against America,[3] had married, as his second wife, the mistress of Rousby Hall, in Calvert County, and had removed thither from his former home, in Westmoreland County, Virginia. By his first wife he had a son, George Lee Mason Fitzhugh,[4] who was near Eden's age, and who was, if possible, a more intimate friend of the Governor than was his father, Colonel Fitzhugh. These were most prominent among the Governor's friends, but by no means the only ones. The whole body of the colonial gentry were delighted to entertain the young Governor. When early in October, 1769, he crossed the bay with a party to pay a visit to Mr. ——— C———, at his plantation on an island in the Chesapeake, early in the morning, after their arrival,[5] "several of the neighboring gentry visited the island to pay their respects to the Governor, and invitations poured in from every quarter." All of these, however, the necessity of a return to Annapolis forced Eden to decline, save one to spend the

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[1] Eddis, p. 9.
[2] Gibson's Sketches of the Bordleys, p. 82.
[3] He was one of the convention which drew Md. Constitution of 1776.
[4] Conway's Barons of the Potomac and the Rappahannock, p. 204.
[5] Eddis, p. 22.

night with Mr. H———, on Kent Island. Such little glimpses of his life show us something of the liking the provincials had for him.

His administration, however, was, even at its beginning, far from being all play. In the great departments of the State in England[1] there were few who possessed so extensive a patronage as the Governor of Maryland.[2] In the performance of his duty, Eddis[3] tells us, "not only in the summer, but during the extreme rigour of an American winter, it is his custom to rise early; till the hour of dinner he devotes the whole of his time to provincial concerns; the meanest individual obtains an easy and immediate access to his person; he investigates with accuracy the complicated duties of his station, and discovers upon every occasion alacrity in the dispatch of business and a perfect knowledge of the relative connexion of the country."

As Governor, Eden was representative both of the Crown and of the Lord Proprietary.[4] He called together, prorogued and dissolved the assemblies, approved or vetoed laws, pardoned criminals,[5] issued warrants for the execution of those convicted of capital offences, and appointed the clergy to the various parishes, whereby he was able "to provide in an ample manner for many worthy and respectable characters."[6]

As the time for the fall races and the session of the Assembly drew near, the gentlemen from the counties, with their families, came to Annapolis for the winter. When winter came on, the fortnightly assemblies began in a large and elegant room, "illuminated to great advantage." For those who did not dance, card tables were provided in rooms at

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[1] He appointed all officers save those of the customs.
[2] Eddis, p. 24, 125.
[3] Eddis, p. 37.
[4] Eddis, p. 44.
[5] Eddis, p. 127.
[6] Eddis, p. 46.

the ends of the hall.[1] Eddis wrote home that there were "few towns of the same size, in any part of the British dominions, that can boast a more polished society," and that, without exception, it surpassed all towns of its size in its great "number of fashionable and handsome women," who showed no less refinement in their manners than those possessing "a long and familiar intercourse with the manners and habits of your great metropolis."[2] In short, "hospitality is the characteristic of the inhabitants," and "party prejudices," we are told by Eddis, "have little influence on social intercourse."[3] This society was not confined to the city itself, but in the vicinity were "many pleasant villas, whose proprietors are eminent for their hospitality."[4] Nor was literature lacking, and in addition to private libraries, William Aikman's Circulating Library furnished books.

So much for private affairs; public ones did not wear the most flattering aspect.[6] The taxes in Townshend's revenue measure and the establishment of courts of admiralty were the chief grounds of complaint.

Early in August Eden received a letter from Lord Hillsborough, stating that the British Government had no intention to lay further taxes, but rather to take off the duties on glass, paper and colors, upon consideration that such duties had been "laid contrary to the true principles of commerce." This letter Eden immediately transmitted to the *Maryland Gazette*,[7] which published it, as a "proof of His Majesty's most gracious attention to the united petitions of his subjects, which cannot too much endear him to us." A great part of the Province did not agree with this effusion of loy-

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[1] Eddis, p. 31.
[2] Eddis, p. 32.
[3] Eddis, p. 93.
[4] Eddis, p. 20.
[5] *Maryland Gazette*, July 1773.
[6] Eddis, p. 25.
[7] *Maryland Gazette*, Aug. 10, 1769. Council agreed to this on Aug. 4.

alty, as we shall see. At the time, however, the letter seemed to Eden to give very great satisfaction, so that he hoped it would be the beginning of a reconciliation of differences.[1] This assurance was received with pleasure in England, and led Lord Hillsborough to an expression of approval of Eden's conduct.[2]

CHAPTER III.

The Assembly of Maryland.

On November 17, 1769, the session of the Legislature began. The Governor and Council met in the small building still standing, and now used as the State Treasury. The Assembly came together in the old Statehouse, which stood on the site of the present one. In the former body were such leaders of the provincials as Richard Lee, Benedict Calvert, Daniel Dulany, John Ridout, Walter Dulany, John Beale Bordley and William Fitzhugh, while the representative body, presided over by Robert Lloyd, counted among its members such able and prominent men as Matthew Tilghman and John Goldsborough, of Talbot; Edward Tilghman and James Hollyday, of Queen Anne's; Samuel Chase, Brice T. B. Worthington and Thomas Johnson, Jr., of Anne Arundel; Wm. Paca, of Annapolis; Stephen Bordley, of Kent, and Thomas Key, of St. Mary's. The legal element was the prominent one, as in all Maryland's early history, and its influence is shown in the terminology and the technical character of the documents drawn up by both houses. The two houses being assembled for this session, the third one of that Assembly, they were thus addressed by their new Governor:[3]

"Gentlemen of the Upper and Lower Houses of Assem-

[1] Letter of Aug. 14, 1769. A. and W. I. Prop., Vol. 181, 3 folios.
[2] Letter of Nov. 4, 1769.
[3] Council agreed to this address on Nov. 12.

bly: From my desire of accommodating the public business to your private affairs, I have delayed calling you together, nor should I, did not the exigencies of government make it necessary, now meet you, merely to notify the Lord Baltimore's appointment of me to succeed Colonel Sharpe as Governor of this Province, to merit which honour and the trust thus reposed in me, I shall ever consider it my indispensable duty to promote on all occasions the prosperity of Maryland.

"Gentlemen of the Lower House:

"Convinced as I am that the real interests of the Lord Proprietary and the people of this Province are inseparable, I meet the Assembly with the most agreeable prospect. From your attachment to the welfare of your country, and from your knowledge of its circumstances, and from your moderation and prudence, I derive the most persuasive and pleasing expectation that this session will be distinguished by the benefits which a dispassionate and amicable intercourse cannot fail to produce, by the propriety of your proceedings, and by the utility of those laws which shall be enacted.

"His Lordship has been pleased to assure you, in the message I am now to have the honour of delivering to you, that if you will prepare the plan for the further improvement of the Province, his encouragement shall not be wanting. Though I warmly wish that a well-founded provision for a more liberal institution of youth may be established here, yet I do not undertake at this time to recommend particular objects to your attention, the observation I have made, during the short interval since my arrival, not affording me sufficient grounds, and if that interval had been much longer, your experience would probably anticipate my recommendations. But give me leave to assure you, you may always rely upon my most cordial concurrence in every measure you may propose conducive to the welfare and happiness of the Province.

"Gentlemen of both houses:

"I am sensible I shall be judged by my actions, and not by any assurances I may give you of my future conduct; to that test I most readily submit, and shall be truly happy, when I leave you, to be able, like my predecessor, to lay my hand on my heart in confidence of having acted solely on the principles here laid down, and having merited, by so doing, the thanks of those, over whom I have the honour to preside."

I have given this speech in full because it is an excellent specimen of those delivered by the Governor at the opening of sessions of the Assembly; because it was his first public announcement of that administrative policy which he steadfastly pursued, and because it shows, in its modest, well-chosen words, its sympathetic spirit and its zeal for education, some of the best characteristics of this fine English gentleman. The message[1] from Frederick, Lord Baltimore, above referred to, would have had more value if the provincials had not too good reason to distrust his Lordship's interest in their welfare. They found, however, that his praise of his brother-in-law was justified. When referring to Eden, as "endeared to me by the nearest ties of affinity, friendship and affection," he said: "Could I distrust his abilities or inclination to make you happy, he is the last person, to whom I would have delegated my authority. Receive him, then, as you find him, credit us both till you have tried him, and if, upon experiment, his merits shall be found to outweigh his failings, excuse my partiality, and render him the justice he shall deserve. I shall ask no more, nor will you return us less."[2]

The two houses shortly returned addresses couched in

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[1] Lord Baltimore sent two letters as alternatives. The Council advised against reading the longer one, which referred with satisfaction to the completion of Mason's & Dixon's Line and mentions division of opinion between proprietary and people.

[2] *Maryland Gazette*, Nov. 23, 1769.

glad and hopeful words, though the Lower House excused itself from doing anything in relation to education at that time on account of the approaching winter.[1]

So rejoiced was Eden over these addresses that on November 23 he wrote to Lord Hillsborough that there was every appearance of harmony, and that he expected a speedy termination of all the troubles.[2] He reckoned without his host. It is true the question as to the amount of fees which officers should receive did not yet appear a great difficulty, though it was soon to cause so much trouble. The fee bill, which was just expiring, was extended for another year to October 1, 1770, but to this there was considerable opposition, led by Samuel Chase and Thomas Johnson, and about one-third of the Lower House voted against it in its various stages.[3] Another controverted point was whether writs of replevin should be issued from county courts. Previously they had only been issued by the Governor as Chancellor. This had produced hardship, and the Lower House wished to make it more easy to obtain the writ. The Upper House amended the bill, requiring a fee to be paid to the Chancellor whenever the writ was sued out. This the Assembly refused to accept, stating "we shall never advisedly consent to any fee being paid where no service is done."[4] The beginning of the struggle over all fees was not far off.

The sheriffs were appointed by the Governor, and were prominent representatives of the proprietary party. They were accused of abusing their powers, and two addresses were sent by the Lower House to the Governor at this session,[5] one complaining of brutal conduct of the sheriff of Charles County, Richard Lee, Jr., in the treatment of a pris-

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[1] Ass. Proceedings, pp. 212, 213.

[2] Answered on Feb. 17, 1770, with request that he transmit laws passed since 1763.

[3] Ass. Proceedings, pp. 219, 220, 221, 223, 231, 232.

[4] Proceedings, p. 226.

[5] Proceedings, p. 235, 237, 250, 253.

oner,[1] and the other alleging that four of the sheriffs had illegally retained license fees.[2] Then, too, there was a long-standing dispute with the Proprietary respecting a tax of fourteen pence sterling per ton of shipping, for his private use, and of twelve pence per hogshead of the cargo "for the support of government," under laws which, the Assembly say, "in the opinion of the people of this province have no real existence."

The Lower House had appointed a London agent to represent them, but the Upper House refused to give him a salary. The Upper House was becoming very much disliked by the Lower one for its "attachment to private property interest and to the profits of office." There was too much ground for this accusation. A little later we find of the members of the Upper House,[3] one, Daniel Dulany, was Secretary of the Province; another, Walter Dulany, Commissary General; a third, Daniel, of St. Thomas Jenifer, Agent and Receiver General; a fourth, John Beale Bordley, Judge of the Admiralty Court; a fifth, William Fitzhugh, Treasurer of the Western Shore; a sixth, William Hayward, Rent Roll Keeper of the Western Shore, and two others, Benedict Calvert and George Steuart, Judges of the Land Office. There was one vacancy in the Upper House, which should have consisted of twelve members. Eight we have already mentioned. Of the other three, one was quite old, and a second newly appointed. Only one of the prominent provincial offices, that of Attorney General, was held by a person not a member of the Upper House.[4]

While local grievances were complained of, the great constitutional questions were not forgotten. Eden's purpose in

[1] On May 8 and 9, 1770, Council heard the case. Lee's accusers did not appear and he presented affidavits exculpating himself. He was acquitted.

[2] An act was passed and assented to by Eden to prevent such abuses in the future. Act of 1769, ch. 15.

[3] Proceedings, pp. 238, 249, 251.

[4] Allen Papers. I. No. 92, 1772.

proroguing the Legislature was a complete failure. In vain did he send them the letter from Lord Hillsborough, received some months since. They resolved unanimously,[1] on December 20, "that the representatives of the freemen of Maryland, in their legislative capacity, with the assent of the other part of the Legislature, have alone the right to lay taxes in Maryland." In spirit similar to that of the Virginians, the Assembly concur with their resolutions and pass resolves of their own, claiming the right of petition, of combination with other colonies in such petition, and of having trial by a jury of the vicinage for all accused persons. They direct the Speaker to send these resolves to other colonies for their concurrence, and order them printed in the *Maryland Gazette.*

This session was also noteworthy for taking the first steps towards the erection of the present capitol. It is a fine colonial structure, and was probably, when built, the grandest edifice in the British colonies. The act, passed in 1769, directed the issue of £318,000 in bills of credit, the whole sum to be redeemed in twelve years. Of this amount, £7500 sterling were to be devoted to building "a new Statehouse, and enlarging, repairing and enclosing the parade." The new building should contain two rooms for the Houses of Assembly, a room for the provincial court, two jury rooms, four committee rooms, and repositories for the records of the Houses, of the various courts, and of the land office.[2]

The resolves, concurring with those of Virginia, were passed on the last day of the session, and shortly thereafter the Governor prorogued the Assembly. In his speech of prorogation he refers with approbation to the seizing the "favorable opportunity of erecting the necessary public buildings, without burdening the subject by additional taxes," and to their supplying a needed "medium of commerce" by the issue of the bills of credit.

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[1] Proceedings, p. 248.

[2] Laws of 1769, ch. 14.

I almost wonder whether Eden can have known of the recently-passed resolutions, when I read that he thanked the gentlemen of the Lower House for "your steady application to the business brought before you, notwithstanding your well-founded apprehension of the inclement weather setting in."[1] This faithfulness, he tells them, "shows you justly worthy of the trust your constituents have placed in you." But we must remember that Eden's opinions were extremely liberal, and he may have, in a quiet way, approved of the resolutions, though so contrary to the claims of the British Government.

The day after the prorogation of the Assembly[2] a numerous meeting was held at Annapolis, at which many gentlemen from the counties were present, and it was determined to continue the non-importation agreement. The people were in no mind to yield.

Eden was forced to remain in Annapolis some time after prorogation of the Legislature, and was not able to embark, as he had expected, on the morning of December 22, with "a circle of select friends," among whom was Eddis, on Col. Wm. Fitzhugh's schooner. After a "pleasant run" they arrived at Rousby Hall, on the Patuxent river, near its mouth, and there spent a merry Christmas. Eden did not leave until the 26th, and then began a tour of visits among the principal families of Calvert, St. Mary's, Charles, Prince George's and Anne Arundel Counties. Everywhere throughout Southern Maryland he was "received with the most obliging proofs of regard and attention." In the course of their trip the party found at each house "excellent accommodations and sumptuous fare." Inclemency of weather prevented them from crossing the Potomac into Virginia, as they had intended, so as to visit Col. George Washington at Mount Vernon. This was apparently the only disappointment met with on the trip, which ended[3] at Annapolis

[1] Proceedings, p. 253.
[2] *Maryland Gazette*, Dec. 21, 1769.
[3] Eddis, p. 126 ff.

on January 14. The weather had grown extremely cold shortly after Christmas, rivers became passable on the ice for heavily-laden wagons, ponds were covered with skaters,[1] and the *Maryland Gazette*, for some weeks, was compelled to reduce its size to a half-sheet, inasmuch as it had so little news to give, communication with the outside world being prevented by the ice in the bay.

This cold did not stop the winter's gayety, and the season found its culmination in a "grand entertainment," given by the Governor to a "numerous party" on Lord Baltimore's birthday. At this "the festivity concluded with cards and dancing, which engaged the attention of their respective votaries till an early hour.[2]

All was not gayety, however. Non-importation was a vexatious matter. About the end of January, 1770, the brig Good Intent, Capt. William Errington, arrived at Annapolis, laden with goods consigned to merchants there. These gave notice that they would allow none of the goods to be landed for twelve days, to permit the committee of inspection to examine them. Four commissioners from the various counties came thereupon to Annapolis and decided that the vessel must be sent back without unloading her. Upon the news of this determination, Eden "endeavored, as my duty to my sovereign and the colony demanded, to persuade them to reconsider the matter, * * but could not convince them of the impropriety of their conduct on this occasion, when they have the greatest reason to expect that the act they complain of as a grievance is already, or shortly will be, repealed.[3] His arguments had no effect, and the brig had to return to England, "liable to be seized in the first English port she enters for carrying back India goods and other things, contrary to the condition of the bonds given on shipping them; liable also to actions on every bill

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[1] Eddis, p. 33.
[2] Eddis, p. 31.
[3] Scharf, Hist. of Md., II., 114.

of lading given by the Captain, who could act not otherwise than he has done." This transaction showed the powerlessness of the Proprietary Government to control the popular will. Lord Hillsborough, in his answer to Eden's letters reporting the affair, told him the Proprietary was "undoubtedly responsible for the due execution of the powers of the government vested in him by his charter." Yet such "execution" was impossible.

The duty was taken off everything but tea on April 12, 1770, but this partial repeal, which still continued the claim of England that she had right to lay taxes, suited Maryland as little as it did the other colonies. Eden wrote to Lord Hillsborough[1] on August 19, 1770: "From what I can observe, I do not imagine that the taking off the duties on glass, paper and colors will put an end to the association while the duty on tea continues. Though there are some here desirous of ending it and associating not to import tea, the general voice is that it will stand as a precedent for laying duties in America on some future occasion." Eden had tried to convince the Marylanders that the act could only serve as a "relief," inasmuch as by it the amount to be paid for tea was less than before, and that "we" (the pronoun is suggestive of Eden's thorough identification of himself with the provincials) ought not at any rate to complain of an act that was beneficial to us, as this is." This attempt had failed; they were willing to pay more for tea, if there were no tax on it in the colonies.

In the same letter, he expressed regret at the censure passed on his conduct respecting the "Good Intent," and states that the discontent is universal throughout the colonies, and he can do little but lament the unhappy differences existing between Great Britain and the Americans.

Just previous to this, Eden had applied for a Lieutenant Colonel's Brevet,[2] on the grounds of his fourteen years' ser-

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[1] Scharf II, 117. *Maryland Gazette*, June 14, 1770.

[2] Letters of Aug. 7, 1770, and Nov. 15, 1770.

vice to the King, of his conduct in the Seven Years' War, and of the precedent of Governor Sharpe, his predecessor, who received the honor now asked for, "without a superior claim." This request was not granted, though Eden stated that he chiefly made it, so "as to be able, in case of a *new* war, to promote the British cause to the utmost of my little abilities and experience in the *last*, which I can only be enabled to do, by an addition to my rank, should my assistance be required out of the province I preside over."[1]

The relations between the State Church, the Anglican one, and the Governor had become clearly defined by the end of the first year of his administration. He had considerable power in religious matters, having at his disposal the patronage of the forty-four parishes, into which the province was divided. In November, 1769, he showed his sympathy with the State Church in an answer to a petition from the clergy that he would endorse and transmit a petition from them to the Lord Proprietary to incorporate in Maryland "a society of support and relief of widows and children of deceased clergymen."[2] In granting their requests, he tells them of his "most earnest inclination to encourage the deserving ministers of the established church, and to prevent any increase of sects dissenting therefrom, too many of whom I have reason to fear have got footing within this province. Your pious endeavors can best stop their further progress, in which I have the greatest reason to expect you will not be wanting." While he thus showed himself favorable to the established church, he was by no means subservient to all of their demands, and in 1770 sternly repressed one of the many attempts to have a Bishop in the colonies. There was sent him in that year a petition[3] from nine clergymen, signed by Robert Reed, secretary, stating that, for want of a Bishop,

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[1] Letter of April 4, 1771.

[2] *Maryland Gazette*, Nov. 23, 1769.

[3] Enclosures were made of letters to the King, the Proprietary and the English Church.

sectaries grow rapidly and deny the Proprietary's right of presentation.[1] To this Eden answered severely; first, because it was not signed individually, but by a person in official character, unknown to the constitution; secondly, he has never heard that sectaries deny the right of presentation, to which "no degree of support or assistance is needed from Episcopal authority." We see the jealousy of the Proprietary here, and the desire to preserve undiminished his control of the church. "How far," Eden proceeds, "and under what forms the establishment of an American Bishop may be a salutary measure, is a consideration of the most momentous concern, deserving the most serious and mature attention, and, being of so great and extensive importance, I shall take an early opportunity of laying the matter before the General Assembly, together with your address and the papers attending it. The motives both of duty and inclination will ever engage me to countenance the worthy ministers of the established church, and to support the just rights of the clergy of Maryland, holding it, at the same time, to be my indispensable duty to protect all quiet and peaceable subjects of every denomination in the full enjoyment of their rights."[2] The reference to the Assembly, if it had not been overlooked in the stormy times to follow, might have brought about strange results. The fact that he proposed it is one of Eden's many instances of feeling for the popular side.

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[1] *Maryland Gazette*, Feb. 11, 1773.

[2] On the next day the signers answer Eden's rebuke, and say they are a committee of the clergy appointed to present the matter to him. Council supported Eden vigorously in his policy (vide records Sept. 15 and ff., 1770). Unfortunately, the Council Records are lost from this on, and we are deprived of their guidance.

CHAPTER IV.

The Quarrel Over the Fee Bill.

In June, 1770, Eddis wrote to a friend in England that "it is a certain fact that the statute imposing duties on glass, paper and tea has undermined the foundation of the cordiality which the repeal of the stamp act had happily re-established, and it is with the utmost concern I am necessitated to acquaint you that a spirit of discontent and disunion is universally predominant in the colonies."[1] Maryland's citizens were as bold as any others and as obstinate in their opposition to taxation. A month after the writing of the letter we have quoted, New York gave up enforcing the non-importation agreement. Lord Hillsborough wrote[2] to Eden that he hoped this "may have a happy influence on the people of Maryland;" but this hope was unfulfilled. In August a Talbot County convention passed resolves[3] violently attacking New York for yielding and renouncing "all commercial connection, correspondence, dealings and intercourse with the Province of New York until either they shall retract their error, or the act retaining the duty on the tea be repealed." Baltimore town, early in October,[4] wished to have the non-importation agreement given up, but a provisional convention, meeting at Annapolis later in the month, decided to hold to it and spoke of Baltimore's request as an "indecent and inconsistent" message.

But now all other causes of difficulty were forgotten in the question of the regulation of the fees paid to officers of the

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[1] Letters from America, p. 62.

[2] Oct. 3, 1770.

[3] *Maryland Gazette.*

[4] Scharf, II, 119.

Proprietary government.[1] The act of 1763 expired in October, 1770, and it devolved on the legislature, which met after two postponements, on September 25, 1770, to prepare a new act or extend the old one for a further period.

As Mr. Lloyd had died during the recess, Edward Tilghman was chosen Speaker. The House, showing great zeal in the public service, voted it would meet daily at 8 A. M., instead of at 9, as at the last session. Governor Eden opened the session with an address,[2] in which he referred to the regulation of Indian affairs, to the want of precision in the criminal law and to the desirability of uniting with Virginia in erecting a lighthouse on Cape Henry. Three days after the opening of the session, Messrs. Bordley, Ringgold and Chase were appointed a committee to bring in a bill "for amending the staple of tobacco, for preventing frauds in His Majesty's customs and for the limitation of officers' fees." These different subjects had been included in the bill just expiring, and the Lower House refused to take any away lest their power to accomplish their main object should be weakened. The committee was enlarged, and its report was taken up by the committee of the whole, which discussed it for about two weeks. The investigations showed that affairs sadly needed reform. The Secretary's fees in chancery amounted to 42,098½ pounds tobacco in 1769, and from his fees in the Provincial Court he received 244,990 pounds more. The commissary's office showed a receipt of 280,000 pounds in that year, and the clerk in the Land Office had received 382,600½ pounds. One service was divided into several for increasing fees, from which those officers obtained their remuneration, as they had no salaries. McMahon estimates the yearly remuneration of the Secretary as nearly $4500, that of the Commissary-General as nearly $7000, and

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[1] McMahon, History of Maryland, p. 382.

[2] Journal, p. 258. The answer was purely formal. Md. Gaz., Oct. 4, 1770.

that of the judges of the Land Office as nearly $4000. These were extremely lucrative posts for that time in this country. The commutation of fees, too, was not sufficiently extensive to suit those who did not raise tobacco, which was the original currency and still the only one receivable in certain cases.[1] The value of the tobacco raised by the planters lay largely in the official inspection by provincial authorities, whose seal of approval was regarded as proof of the excellence of the product. This system of inspection was provided for by the same bill in which the officers' fees were stated. The State Church, also, depended largely upon the bill, by whose provision every "taxable," that is, a male of full age, was obliged to pay thirty pounds of tobacco yearly to the support of the Anglican Church.

On October 17 an act passed[2] the Lower House reducing many of the fees and allowing a composition in money in all cases. The Upper House kept the bill five days and then returned it, refusing to concur without amendments. When the Lower House received this answer, which they must have known was coming, they passed resolutions on November 1 reaffirming the resolutions passed in 1739, during an earlier quarrel about the fees, declaring that these fees are now "excessive, great and oppressive to the subject and are under no regulation of any law of this province." The previous bill had now expired, and they claim there are now no legal fees, and that those raised otherwise than by law

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[1] McMahon, pp. 381 ff. Proclamation claimed to put planters and farmers on same basis in this respect (vide John Hammond in Md. Gazette, Sept. 9, 1773). "A particular period in each year was assigned, within which the fees were to be delivered to the sheriff and by him to the party charged for voluntary payment. If that period was suffered to elapse, the sheriff was required to levy them by process of execution and account for them to the officers within another assigned period. Commutation was fixed at the rate of a penny a pound of tobacco or 12s. 6d. per cwt.

[2] Journal, p. 279,

are arbitrary, unconstitutional and oppressive, unless fixed by a jury of the vicinage.[1]

They claim that Marylanders are entitled to the "rights and liberties of the subjects in our mother country" to the customs, common law and "securitive statutes" of England. Fees, the resolutions state, are only another form of taxes, and hence should be laid only by the Assembly in Maryland and by Parliament in England, and taxes otherwise imposed are "invasions on the fundamental constitution of this province."[2] The strong words of their resolves were called forth by an aggressive act on the part of the judges of the Land Office. They had directed their clerk to collect the same fees he had received while the act was in force. This he did, and for this "high contempt" of the Lower House that body ordered him to be kept "safe and close" during its pleasure. Eden, acting on the advice of the Council, immediately prorogued the Assembly for three days, which had the effect of releasing the prisoner at once. On coming together again on November 5 the minds of the members of the Assembly were incensed by this sudden prorogation, as well as by the quarrel over the fees. As a consequence that body shortly prepared an address[3] and sent it to the Governor, protesting against the prorogation in frank and audacious words.[4] They tell him "the Proprietor has no rights, sir, either by himself or with the advice of his Council, to establish or regulate fees of officers, and could we persuade ourselves that you could possibly entertain a different opinion we should be bold to tell your Excellency that the people of this province will ever oppose the usurpation of such a right." The attempt of the registers of the Land Office to

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[1] Journal, pp. 286, 301.

[2] Journal, p. 302.

[3] Journal, p. 311.

[4] Carroll, March 11, 1773, in *Md. Gazette*, says the Lower House feared a proclamation, which would be "incompatible with the permanent security of property and the constitutional liberties of the subject," and this fear caused them to word the address thus.

regulate fees by a proclamation, when the Assembly was engaged in deliberating upon a fee bill, they consider an insult, with some reason, and ask Eden to express to them his disapprobation of such conduct, and, if it be repeated, to remove the offenders from office.

The Upper House had already proposed a conference over the bill which was pending in the Assembly, having been passed again by the Lower House on the day after its reassembling. This request was agreed to by the Lower House,[1] provided the Upper one first send a list of the amendments it desired. These the Upper House indicated in general,[2] but declined to go into particulars. Among other things they suggest a salary of £600 sterling, in lieu of fees, to the Secretary, Commissary-General and judges of the Land Office, while keeping the table of fees the same as previously. With all of the Upper House amendments the Lower one disagreed,[3] making the rather singular objection to the proposition to fix salaries that these would render officers less diligent.

We feel that both parties were losing any desire for conciliation. The Lower House said they were willing to go into conference, to which the Upper replied that if it was predetermined that all the amendments would be rejected they did not care to prolong the session.[4] The Lower House then offered to separate the different parts of the bill[5] and pass all but the part relating to officers' fees.[6] By this the regulation of the staple tobacco, the payment of the clergy and the lawyers, and provincial, county and parochial charges would all be provided for. By refusing this, and stating that they would only consent to correct abuses in the old system, the Upper House clearly put itself in the

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[1] Journal, p. 313.
[2] Journal, p. 316.
[3] Journal, p. 319.
[4] Journal, p. 320.
[5] Journal, p. 322.
[6] Done in 1774.

wrong and laid itself open to attack.[1] The Lower House on receiving this message, by a close vote,[2] resolved to send to the Upper House queries as to certain things which they considered as abuses and concerning which they wished to know the opinion of their antagonists. Here the Lower House laid themselves open to attack from the side of parliamentary law, and the Upper House, taking advantage of this, declined to answer the queries, which should properly come before a conference committee. With this answer they returned the bill unapproved.[3] There was no hope of a compromise, and Eden prepared to prorogue the Assembly, which he did from November 21 until December 11. Before the prorogation, however, Eden transmitted a reply to the address sent him by the Lower House early in the session. He informs them[4] he had prorogued the Assembly for three days on the advice of his Council, that "a short recess might be productive of sedate reflection." The offense of the clerk of the Land Office, if any, should have been prosecuted in the courts, where he might have had protection of law, judge and jury. He regretted the spirit of this address, and informs them that while it is his duty to avoid every occasion of reasonable complaint, it is also his duty to check the exercise of such powers as are incompatible with the indubitable authority of government, the permanent security of property and the constitutional liberty of the subject. It is an unusual position for an English Governor of the period to take, and yet one where Eden had at least a plausible basis.

Eden makes the point that the Land Office registers made no proclamation, but only preserved the old rate, which seemed equitable from its existence for twenty-three years. He claims that the Land Office is, at any rate, rather a pri-

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[1] Journal, p. 324.
[2] 22 to 19, Journal, p. 326.
[3] Journal, p. 333.
[4] Journal, p. 335.

vate[1] than a public one; for, surely, Lord Baltimore has right to dispose as he will of his land and to settle the rewards of the officers who attend to such sale. He assures them "that his Lordship's authority had not yet been interposed in the regulation of fees of officers, nor had he any reason to imagine it would interpose in such a manner as to justify a regular opposition to it." This statement was remembered against him by the opposition.[2] Eden speaks of the necessity of the balance of counteracting powers "for the protection of the people and the preservation of the public peace," and assures them "that I will on every occasion pay a due regard to your rights, that I shall never countenance the illegal exactions of any officer, nor submit to any usurpation which may essentially endanger that constitutional balance of counteracting powers so necessary for the protection of the people and preservation of the public peace."

Several acts of this session were approved by the Governor, among them one erecting Eden parish in Western Maryland.[3] But though this token of regard was given him, in the resolutions the Lower House passed the last day of the session his councillors are severely scored for manifesting "an unreasonable attachment to the emoluments of office"[4] and for having an "unjustifiable design to force this branch of the legislature into a regulation of fees more correspondent to those schemes of wealth and power" which they have formed.[5]

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[1] The careful way in which the Provisional Government later dealt with the Land Office shows how strong this idea was.

[2] *Maryland Gazette*, March 11, 1773. The legislature complain of this in 1771.

[3] Laws of 1770, ch. IX., *Maryland Gazette*, Dec. 22, 1770, contains a poem on Christmas dedicated to Eden.

[4] *Maryland Gazette*, Nov. 22, 1770.

[5] In *Maryland Gazette*, Nov. 29, 1770. Register of Commissary General and Clerk of Provincial Court publish affidavits that they have taken no unlawful fees.

A very few days after the adjournment of the Assembly[1] the Governor issued his famous proclamation. This document was quite artfully framed; it did not profess to fix any fees whatever, but strictly prohibited any officer from taking a greater fee than allowed by the act of 1763. Of course, *e converso*, the taking of a fee equal to that allowed previously was approved of and would be sanctioned, though technically Eden escapes the charge of making a table of fees.[2] At first little was written about the proclamation. Eight of the most prominent lawyers of Anne Arundel county had already stated that they would receive fees, either in tobacco or money, at the rate of ten shillings per 100 pounds, and had been thanked by the grand jury therefor.[3] Revs. Bennet Allen and Thomas Chase published notices to the same effect, but they were not thanked, for, by the expiration of the old act of 1763, the act of 1702 came into effect, which increased the poll tax from thirty to forty pounds per poll, and this increase the clergy showed no disposition to give up.[4]

Shortly after the beginning of December the planters of Charles county resolved to have a private inspection of their staple, to prevent by this the exportation of "Virginia trash for Maryland tobacco."[5] This example proved a popular one and was immediately followed by the planters of Queen Anne's and later by those of Prince George's and Anne Arundel.[6]

In December Eden dissolved the Assembly and issued writs for the election of a new one to meet in February; but, ere that date had come, prorogued it until October. His motives in doing so were questioned, and it was held by some that the prorogation was intended to call forth a peti-

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[1] Nov. 26, 1770.
[2] *Maryland Gazette*, Dec. 13, 1770.
[3] *Maryland Gazette*, Nov. 18, 5, 1770.
[4] *Maryland Gazette*, Nov. 22, 1770, Jan. 3, 1771.
[5] *Maryland Gazette*, Dec. 6, 1770, Dec. 13, 1770.
[6] *Maryland Gazette*, Feb. 21, 1771, Mch. 28, 1771.

tion for an earlier meeting, which would imply "too great fondness" for the inspection law or groundless fear of officers.[1]

There is little wonder that Eden wrote[2] to Hillsborough that he could not boast of great harmony during the last two sessions. In order to win over supporters to the Proprietary's party and make the next session more harmonious communications from the Governor's supporters now appear in the *Maryland Gazette*.[3] Four of these appeared before there was a reply. They are all well written and show keenness in perception of the weak points of the popular cause, attacking among other things the fees of the lawyers,[4] who were mostly of the popular party, and the action of the Lower House in ordering fees to be paid to it.[5]

The province was not yet thoroughly aroused for either side, and the Governor could find time to attend frequently the performances of the American Company, whose actors were "equal at least," writes Eddis to an English friend, "to those who sustain the best of the first characters in your most celebrated provincial theatres."[6] This company came in January, 1771, and during its stay in Annapolis so charmed the people that a new theatre was immediately erected against their return.[7] In this enterprise the Governor was prominent "from a strong conviction that the stage under proper regulations may be rendered of general utility and made subservient to the great interests of religion and

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[1] *Maryland Gazette*, Feb. 7, 1771.

[2] April 4, 1771.

[3] March 7, 1771, May 2, 1771, June 20, 1771, June 27, 1771.

[4] "More truly burdensome and expensive to Maryland than all the other orders of the community put together."

[5] Aug. 4, 1771. Eden writes to Lord Hillsborough, giving his congratulations on the birth of a prince and on the suppression of the "late dangerous insurrection of the Regulators in North Carolina," a colony whose "back parts are infested with all sorts of lawless vagabonds." He also speaks of Indian trade. The letter was answered on Dec. 4.

[6] Eddis, p. 94.

[7] Opened on September 9, 1771.

virtue." Of the private life of Eden during the year we know but little, though we get glimpses from the *Maryland Gazette* of the successful inoculation of his two younger children[1] "in spite of inclement weather," of the theft of his whale boat by unknown parties,[2] and of a two months' visit during the summer from his brother, Thomas Eden, who took Mrs. Eden with him as far as New York on his return.[3] From this time on Thomas Eden, with his vessel the "Annapolis," made yearly trips from England to Maryland, bringing the planters the supplies they needed and taking back tobacco.[4]

CHAPTER V.

The Proclamation.

McMahon writes[5] of this document as follows: "From the first appearance of the proclamation[6] it aroused in hostility to it the great body of the people, with a spirit not to be seduced from resistance by the influence of talents, the

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[1] Feb. 28, 1771. The youngest was only eight months old.

[2] Aug. 8, 1771.

[3] July 27 and Sept. 26, 1771.

[4] Vide Apr. 23, 1772.

[5] History of Md., p. 385.

[6] The Proclamation[a] is of such importance that it is worth being quoted in full: "Being desirous to prevent any oppressions and extortions from being committed under color of office, by any of the officers and ministers of this Province, and every of them, their deputies or substitutes in exacting unreasonable and excessive fees from the good people thereof, I have thought fit, with the advice of his Lordship's Council of State, to issue this, my Proclamation; and I do hereby order and direct, that, from and after the publication thereof, no officer or officers (the Judges of the Land Office excepted, who are subject to other regulations to them given in charge[b]), their deputies or substitutes, by reason or color of his or their office or offices, have, receive, demand or take of any person or persons, directly or indirectly, any other or greater fees than by an Act of Assembly of this Province, entitled An Act for amending the staple of tobacco, for preventing frauds in his Majesty's customs, and for

menaces of power or the soothings of official patronage. Never was a measure of internal policy more thoroughly investigated and discussed. Parties were formed upon it and drew to their aid every man of influence and abilities in the province. The Governor and his courtiers, the officers and their adherents and the established clergy were arrayed against the great body of the people, sustained and led on in opposition by the great body of the lawyers." The steadfastness of the Governor and of the people continued so long that the legality of the proclamation and of the acts done under it remained an unsettled question down to the end of the Proprietary government. Though most of the prominent lawyers were opposed to the Governor, he had strong supporters in that profession, and from the very outbreak of the struggle between prerogative and privilege in Maryland it was a lawyer's battle, wherein the antagonists showed great knowledge of English precedents. As lawyers, the leaders deprecated violent steps and wished everything to be done in due form. This fact, together with the wisdom and moderation of Eden, caused the Revolution to come gradually and peacefully in Maryland, in strong contrast to the course of events in neighboring provnces and colonies.

The controversy over the proclamation and the regulation of fees broke out with fresh virulence on the meeting of the General Assembly on October 2, 1771. This new Assembly was no better inclined towards the Governor's plans than the

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the limitations of Officer's Fees, were limited or allowed; or take or receive of any person or persons, on immediate payment (in case payment shall be made in money), any larger fee than after the rate of 12s. and 6d., common current money, for 100 pounds of tobacco, under the pain of my displeasure; and, to the intent that all persons concerned may have due notice thereof, I do strictly charge and require the several sheriff's of this Province to make this, my Proclamation, public in their respective counties in the usual manner, as they shall answer the contrary at their peril."

(*a*) *Maryland Gazette*, Feb. 18, 1773.

(*b*) Instructions of November 24, 1770, under Great Seal for Fees of the Land Office.

former one had been. They claimed that the weight of precedent was against such a proclamation, that there was no charter power under which it could be sheltered, and that, by defeating the purposes of the Lower House in adopting a measure they refused, it was an act of arbitrary prerogative and an usurpation of the right of taxation.[1]

In the midst of the bitterest quarrels between the executive and the legislature, it is remarkable that so little personal animosity was aroused. McMahon well sums up the matter[2] in saying of Eden and his administration: "His unadvised proclamation, although ascribed to the councils of others, was of itself sufficient to have rendered him odious to the great body of the people. Yet, in the midst of all the commotions of the province, and even whilst his own measures were exciting general indignation, he seems to have been respected, nay even beloved." The reason for this condition of things, seemingly so strange, cannot be better stated than by quoting again McMahon's words: "Easy of access, courteous to all and fascinating by his accomplishments, he still retained his hold upon the affections even of his opponents, who, for the qualities of his heart and the graces of his manner, were willing to forgive the personal errors of his government."

On October 2, 1771, Eden opened the new Legislature[3] with an address, in which he carefully avoided all reference to the proclamation or the inspection law. He urged reforms in the criminal law, a contribution towards aiding Virginia in building a lighthouse on Cape Henry, and proclaimed himself an advocate of good roads. On the latter question he spoke thus: "The provision hitherto made for repairing and keeping in order the publick roads having

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[1] vide McMahon, p. 381, ff.

[2] History of Md., p. 434. McMahon must have known many who had a personal acquaintance with Eden.

[3] At this session two delegates from Charles County were unseated for "treating."

proved very ineffectual, let me also beg your peculiar regard to this subject. Our situation for commerce has many natural advantages, which will be diminished or improved in proportion to our neglect or care in shortening distances and facilitating the carriage of our native produce to market." He closes his address with the assurance of "my most cheerful concurrence in every measure tending to promote the real interest of this country, and that I shall deem myself happy in proportion to the prosperity the people of this province shall derive from my administration."

To this address both Houses made cordial response, and in acknowledging the response of the Lower House Eden reasserts the position above taken, by telling them that his "recommendations shall never point anything to your consideration that does not strike me as an object really conducive to the welfare of the province and the happiness of the people."

The new State-house not being ready, the Assembly met in the coffee-house, at first, and afterwards in the ballroom. In the former place, on the second day of the session, the Lower House unanimously adopted resolves which told in ringing words of their fixed determination to resist all unjust claims of England. They declared that this province is not under the circumstances of a conquered country; that, if it were, the present Christian inhabitants thereof would be in the circumstances, not of the conquered, but of the conqueror, they being a colony of the English nation, encouraged by the Crown to transplant themselves hither for the sake of improving and enlarging its dominions, which, by the blessing of God upon their endeavor, has been in great measure obtained, at their own expense and labor. It is unanimously resolved[1] that whosoever shall advance the

[1] Another resolution of the series deals with the relation of the colonists to the Indians. "Resolved also that, if there be any pretence of conquest it can only be supposed against the native Indian Infidels, which supposition cannot be admitted, because the Christian inhabitants purchased great part of the land they at first took up from

proposition that His Majesty's subjects, by such their endeavors and success, have forfeited any part of their English liberties, are enemies to the province and mistake its happy constitution.

Other resolutions claimed "that this Province hath always hitherto had the Common Law and such general statutes of England as are securitative of the rights and liberties of the subject, and such acts of assembly as were made in the Province to suit its particular constitution, as the rule and standard of its government and judicature," and denounced the tax of a shilling per hogshead on exported tobacco as illegal.

The Lower House declined to go into the general revision of the criminal law,[1] but agreed to discuss any specific defects therein and ask Eden to mention any defects he has found. He answers, in an able paper, complaining that at present there is not "any precise, invariable rule established by which the extent of the penal statutes of England may be ascertained." It is doubtful which statutes are suitable to this country, and to leave that question for decision to the judges would destroy the uniformity of the laws. He further questioned whether the existing English law be not "too undistinguishing and too sanguinary." The Legislature, however, did not take up the matter.

At this session the Lower House, with one dissenting voice, passed a bill for a tax of fourpence per hogshead of tobacco for the support of a provincial agent at London, but the Upper House rejected the bill.[2]

The two Houses soon showed an irreconcilable difference on the question of fees. The Upper House steadfastly in-

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the Indians, as well as from the Lord Proprietary, and have ever since continued in an amicable course of trade with them, except some partial outrages and skirmishes, which never amounted to a general conquest, the Indians yet enjoying all their rights and privileges of treaties and trade with the English."

[1] Proceedings, Oct. 9, L. H., 24, 25.

[2] Proceedings, L. H. Nov. 5, U. H., Nov. 29, 1771.

sisted on the old table. The Lower one, with equal steadfastness, insisted on a new one, being ably led in this contention by Edward Tilghman, their speaker.[1]

On October 10 the Lower House summoned certain county surveyors to attend and answer for recovering from the people of this province fees, illegal and oppressive, and not warranted by the late regulation, nor by any law of the province. The same day the Committee of Aggrievances and Courts of Justice reported that fees are in themselves, as now paid, excessive, great and oppressive to the subject and are exacted under no regulation of any law, but by virtue of "some proclamation."[2]

The House at once appointed a committee to bring in a bill for regulating the staple of tobacco and the amount of fees. The committee's report was read on October 14, and, three days later, the sheriff of Anne Arundel county and the clerk of the Land Office were ordered to appear with Eden's proclamations. This they did, and the documents were spread on the records. On October 18 the House had read to it the resolves it had passed on November 1, 1770, the statute *de tallagio non concedendo*,[3] the Bill of Rights of 1689,[4] the eighth section of the provincial charter, and the early provincial statute providing that no money be raised within the province without the consent of the Assembly.[5] They passed the new bill for regulating fees and the inspection of tobacco, and resolved unanimously that the representatives of the freemen of this province, with the assent of the other part of the Legislature, have the sole right to impose and

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[1] Vide *Maryland Gazette*, June 20, 1771. Other popular leaders were Samuel Chase, Wm. Paca, Chas. Graham of Calvert, John Hall of Annapolis, and Thos. Johnson, Jr. McMahon, p. 394.

[2] On Oct. 21, one of these was discharged. On Oct. 27, another was reprimanded, ordered to pay costs, and when refused, committed to the custody of the sergeant at arms.

[3] 34, Ed. I., ch. I.

[4] I. W. and M., ch. 2.

[5] Act of Apr. 29, 1650.

establish taxes and fees, and to attempt to do this under color of a proclamation, issued in the names of the Proprietary, is arbitrary, unconstitutional and oppressive.

Further resolves denounce Eden's proclamation, and claim that where no fee is established by law an officer should sue for the value of his services, the amount to be fixed by a jury. Finally, the House resolved "that the advisers of the Proprietary are enemies to the peace, welfare and happiness of this province and of the laws and constitution thereof." The last resolve had three negative votes; the first passed without a dissenting voice.[1] The bill was taken at once to the Upper House and rejected by that body on October 30, as "many parts in it" are "of such a nature as cannot with any reason or justice be passed as they now stand." They ask for a conference on the subject.[2] The Lower House agreed to this proposition by a vote of twenty-eight to nineteen.[3] In the minority were the prominent patriot leaders, Paca, Chase, Tilghman, Smallwood and Johnson.

Another complication had arisen.[4] The Lower House decided by a vote of twenty-two to sixteen on October 16 to offer the clergy thirty-two pounds of tobacco per poll, instead of thirty, if the amount were compounded for in money. This was in the nature of a compromise, and, for the time, it looked as if the Upper House would accept it; but on November 1 Eden wrote to that body that if such a regulation were established, "many ministers, who now have but a scanty provision, would be reduced to a state of much indigence and distress," and, therefore, he will not assent to it. He tells them he does not know that such intimation of the Governor's purpose is usual in advance of the passage of a bill, but hopes it will be found "agreeable to the character

[1] Wm. Richardson, Ennalls (both of Dorchester) and Hall.

[2] Conferees for U. H.: Calvert, D. Dulany, Ridout, Bordley, Hayward.

[3] Conferees for L. H.: Grahame, Tilghman, Johnson, Chase, Hall, Hammond and Dennis.

[4] Proceedings, Oct. 10.

of candour." This letter caused the Upper House to withdraw any concession.[1] On November 8 the Lower House gave leave to bring in a bill for the maintenance of the clergy. It was reported on the 9th, passed on the 19th by a vote of twenty-five to eight,[2] amended by the Upper House on the 21st, and finally assented to by Eden on the 23d.

The provisions of this act[3] are "singular and curious." They require every minister, within four months after induction, to take oaths to the government and an oath "that he has made no simonical contract for his benefice." If he neglect to take these oaths, or be found guilty of any such contract, he shall be adjudged as disabled to hold any living whatever. If he be absent from his parish for one entire month or for two months at different times in any one year he shall forfeit £10 sterling to the use of the parish.

Upon a complaint in writing made by a majority of the vestrymen and wardens to the Governor and Council setting forth that the incumbent hath wilfully neglected to officiate or hath been guilty of scandalous immorality, the Governor, by the advice of the Council, may appoint three beneficed clergymen and three laymen, who, together with the Governor, or the senior member of the Church of England in the Council, if the Governor be not of that church, shall sit as a tribunal on this case. The grand jury must endorse the complaint, before the special tribunal may hear it. The sentence may be to admonish, to suspend, or totally to deprive of office, and the offender may further be required to pay costs. This regulation of the conduct of the provincial clergy was to endure for seven years. I know of no action taken under it, and its life was ended with that of the State church. As will be seen, it was an act for the regulation of the clergy, not for their maintenance.

The conference did not go on at all smoothly. On No-

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[1] Proceedings, Nov. 7, 1771.

[2] Chase and Tilghman in the negative.

[3] Act of 1771, ch. 31.

vember 4 the Upper House submitted a list of propositions, which were considered and partly accepted by the Lower. A second list of propositions was sent down on the 6th, rejected by the Lower House at once, and a request sent by the latter body that the conference now end.[1] It was continued, however, though, on the 11th, the Upper House also asked that it end. Propositions were sent to and fro. On the 11th the Lower House specified the abuses it found in the old fee table first adopted in 1747. On the 19th the Lower House, by a vote of thirteen to twenty-three, again rejected the Upper House propositions, and, finally, on the 22d, a paper was sent by the Lower House definitely breaking off the conference. The next day the whole Lower House, save three members, who voted against such action, presented an address to Eden defending their position.

The last act of the drama had come. The Upper House again rejected the fee bill on the 25th, and on the 28th the Lower House requested a prorogation of the session.

The attempt to compromise the difficulties had failed.[2] On November 26 the Upper House conferees sent a bitter letter to the Lower House, in answer to which they retort as follows: "A particular answer to your illiberal language cannot be productive of any public good, and not being disposed to attempt a rivalship with your Honours in the talents for petulance and impertinent invective, the Lower House have ordered an end put to this conference."

The address[3] presented to the Lower House to the Governor refers to the proclamation as "unconstitutional in the

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[1] Vote stood 27 to 17. All popular leaders but Paca were in negative.

[2] Another bill much desired by the Lower House at this session, but rejected by the Upper, was one to authorize the emission of bills of credit. This bill included an appropriation, seemingly provisional only, for the establishment of a seminary of learning. The Lower House, in this connection, on Nov. 16, strongly protested against the amendment of money bills by the Upper House.

[3] T. Johnson, Jr., presented the address to the Governor. McMahon, p. 394.

matter and shadowed in the manner, with the assigned reason to prevent extortion by the officers, in imitation of the practice of arbitrary kings, who, in their proclamations, which have been declared illegal, generally covered their designs with the specious pretence of public good." This warm language shows the extent to which men's minds were aroused. According to this address, the most important question was as to whether the Land Office was a public or private one. The Assembly admits that the lands may be disposed of, according to the charter, by Lord Baltimore "upon such reasonable terms as he might think proper," and that he may "direct formal observances in making title to his grants, so as to further the increase and settlement of the province;" yet they claim that "after the publication of the conditions of plantations, that which before was uncertain, and to be governed by what was reasonable, was thereby ascertained and a permanent interest vested in the subject, which cannot be rescinded by the Proprietary at his pleasure." They proceed to tell Eden that "the Land Office, sir, is the public repository of the first and most necessary evidence of every man's title to his real estate in this province; the whole records have been made up, so far as we can trace, at the expense of the people. Those records have been considered as public records, kept under securities appointed by acts of Assembly, and office copies are constantly received and admitted as evidence by the courts of justice."

It is difficult to resist the force of this reasoning. They go further and quote against Eden his own words, that "a right to determine the charges of fees excessive, implies the right to settle the exact compensation due for the services performed." Therefore, they say, as Eden had declared the greater fees excessive, he has also claimed the latter right.

In support of their position they quote from Coke's Institutes and the statute *de tallagio non concedendo* to prove that fees of office are a tax upon the subject, and urge that the officers of justice were paid by the common law from the Crown revenues and that no fees were levied by proclama-

tion of England. The charter of the province supports the popular cause, inasmuch as it provides that laws are only to be made with the assent of the freemen. In 1692 the Lower House had voted that the Assembly alone could impose fees, and the result of the long struggle from 1733 to 1747 had been a recognition of that principle. "Applications to public officers," they state, "are not of choice, but of necessity." If the prerogative may "rightfully regulate the fees" to be paid for such application, "agreeable to the late inspection law, it has a right to fix any other quantum; if it has a *right* to *regulate* to *one penny*, it has a *right* to regulate to a *million*, for where does its right stop? At any given point? To attempt to limit its right, after granting it to exist at all, is contrary to reason, and granting it to exist at all is contrary to justice." The masterly logic of this address reminds us of that used by Marshall in his decision in the case of McCulloh *versus* Maryland, and is one of the many proofs of the thorough legal education of the patriotic leaders in the province.

In closing, the delegates tell the Governor that not only was the old law "in some particulars exorbitant," but also was so vague that "many abuses had been committed by the officers in their charges, which could be palliated only from the doubtfulness of the expressions in the tables." They appeal to Eden to withdraw the proclamation, which they feel sure was issued on the advice of others, whose names they beg him to disclose. Thus strongly and skillfully was the case stated for the people.

Eden was not less skillful in his answer, dated November 29, 1771, which set forth the side of the Proprietary in the best possible light. He is evidently considerably offended by the tone of the paper sent him by the House, and refers to it as an "extraordinary address, dictated by a spirit to excite popular animosity." "The sentiments you have expressed against my proclamation have proceeded." in Eden's opinion, "from your persuasion of its having been calculated to prevent litigation and secure the public peace, and

your apprehension, if left to its proper effect, would extinguish the discontent you took so much pains to kindle." A direct attack is made upon the Lower House. Their treatment of the clerk of the Land Office,[1] by committing him to be kept safe and close to await their pleasure, was worse than the acts of a highwayman; the payment of fees to the officers of the Lower House, under pain of imprisonment, is complained of and Eden asks on what principle the Speaker and clerk receive an allowance on the passage of private bills.

Having thus shown his indignation, he next turns to argument, and, in the first place, shows that the jury trial on a *quantum meruit*, which the popular party urge as the true remedy for officers, is merely a pretence, as small fees could not thus be sued for, since a debt had to amount to 600 pounds of tobacco or fifty shillings currency before a jury could decide upon it. He makes the old claim that there must be some power to curb demands of the officers and prevent extortion, defends his advisers and takes the responsibility upon himself.

He next takes up the historical argument. In 1633 the officers appointed by Lord Baltimore were authorized by him to take the same fees as were legal in Virginia; in 1642 the Governor and Council published a fee table; in 1676 the Assembly, in passing an act for fees, provided that fees not therein mentioned should be fixed by the Proprietary and his Council, and temporary acts of 1692 and subsequent years contained the same provision. The Proprietary had royal prerogatives.[2] If the King can settle provincial fees, so can Lord Baltimore, and it is well known that the royal Governors of Maryland were authorized by their commission to settle officers' fees. In Governor Hart's administration, when the fee bill expired, he directed the keeper of the seal

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[1] Wm. Steuart.

[2] It is interesting to note that the Maryland Courts, since the Revolution, have decided against this view.

to affix it to no paper, until the fee be paid according to the former law, and, during the struggle over fees from 1733 to 1747, fees were regulated in Maryland by proclamation of the Governor. Having heaped up such a formidable array of precedents, Eden takes up the question of the Land Office, which he claims to be quasi-public only.[1] The conditions of plantation, he remarks, have greatly varied from time to time.

He next informs the Lower House as to his motives in issuing the proclamation; that he did not determine so to do "till after the most mature consideration; it appeared to me to be a measure not only lawful, but necessary; not only what I might, but what I ought to pursue. The framers of your resolves have indeed censured it in outrageous terms of resentment, and I am not without suspicion the great benefits of an inspection law have been given up that clamor and dissension might succeed; but I have reason to believe most thinking and dispassionate men approve of an interposition calculated to promote the peace and tranquillity and, consequently, the happiness of the people." As to his advisers, he says: "Whom am I to consult and whom to exclude from my confidence, I must not suffer you to direct, however ardently some of you may wish it, nor shall any man have the least pretence to reproach me with the dishonour of having betrayed, with the smallest appearance, his confidence."

In conclusion, Eden returns to the propriety of his proclamation, saying: "So clear is my conviction of the propriety and utility of a regulation to prevent extortion and infinite litigation that, instead of recalling it, if it was necessary to enforce it, I should renew my proclamation, and, in stronger terms, threaten all officers with my displeasure

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[1] Sept. 9, 1773, in a very able article in the *Maryland Gazette*, Johnson, Paca and Chase refer to this controversy, and claim that Eden virtually admitted the claim of the Legislature as to the Land Office.

who shall presume to ask or receive of the people any fee beyond my instructions."[1]

The day after writing this response Eden prorogued the Assembly until February 18. The record of its work on the statute book was not a long one. It had passed an important statute with reference to the naturalization of foreigners,[2] but the most of its laws dealt with such subjects as the prevention of the "exportation of flour, staves and shingles not merchantable from Baltimore county,[3] and the regulation of the "weight of hay and measures of grain, salt, flaxseed and firewood in that county."[4] Through the controversy the more important measures had failed.

Eden, in his closing speech to the Assembly,[5] regretting that, because the season is so far advanced, they cannot consider the measures he advised, complains of "the vast loss of time to yourselves and the great expense of money to the country which have accrued this session, and the very little business that has been done at it." He had "flattered" himself "that the inspection act would be re-enacted." "However it has happened" that the fee table which they urged upon the Proprietary almost against his will in 1755 should now be so distasteful to them, he does not "undertake absolutely to pronounce." He, however, suggests that this "present disappointment" is due "to the flame you were blown into at the opening of the session, by the mistaken construction or explanation of a proclamation issued by me solely for the benefit of the people of this province, by nine-

[1] Not a word of this conference, or of these important State papers, is found in the *Maryland Gazette*.

[2] Act of 1771, ch. 1.

[3] We see that even in Provincial days that special legislation, which is one of the great defects in Maryland law-making, had begun.

[4] Act of 1771, ch. 15, 20. An act proposed allowing clergy to be tried by laymen for spiritual offenses was protested against in *Maryland Gazette*, Nov. 28, 1771.

[5] Baltimore having died before the end of the session, there was some doubt as to the legality of the laws then passed, and they were affirmed in June, 1773.

tenths of whom I have the greatest reason to think it was so understood." In a reproachful manner, he adds "that I sincerely wish the same zeal for the service of the province which has all along actuated my conduct was diffused amongst others, and it is not now too much to hope it may be so hereafter." In closing, he affirms his steadfastness in maintaining the proclamation. "His Lordship's officers throughout the province are thoroughly acquainted with my sentiments and the consequences of any disobedience of the orders issued by me with respect to any imposition on or extortion from the people during the want of an inspection law. I am, therefore, under no necessity of repeating the proclamation on that head, otherwise, notwithstanding your address, I most certainly should do what I think my duty in the situation I am placed requires, and whilst I continue therein, I hope my actions will ever evince that the prosperity of the province is the first object of my wishes."[1]

For nearly two years now there was no meeting of the Assembly, and people either paid fees under protest, according to the old law, or refused to pay any. The popular theory was that, no fees being established by law, "the power of ascertaining the *quantum* of the reward is constitutionally in a jury upon the action of the party;"[2] but it is probable in most cases the government theory was successfully adhered to by the officers.

CHAPTER VI.

The Difficulties of the Clergy.

The clergy seem at some times to have excited more attention than the secular officers of government. They had difficulties among themselves on the Eastern Shore during

[1] The Legislature appropriated £50 for the entertainment of a delegation of Delaware, Munsie and Mohegan Indians at this session.

[2] *Maryland Gazette*, Sept. 9, 1773.

the summer of 1771 which filled several columns of the *Maryland Gazette.*[1] In the autumn we find in that paper a long letter from an Eastern Shore clergyman complaining of injustice and the loss the clergy were suffering through being paid in paper currency instead of tobacco. He tells his readers that the rich will chiefly profit by the change, that the clergy are gentlemen and must live differently from laboring men.[2] If they live as the latter they will be despised and their profession brought into contempt. With their former salaries they could not lay anything by, and with the diminished pay not only will they be impoverished, but the division of several parishes, which is very desirable, will be indefinitely postponed. The loss which the province has already sustained from want of an inspection law far overbalances all that could be saved in many years by the projected regulations.

The clergy petitioned Eden's favor on October 5, 1771.[3] They say: "To the well judged care of the Proprietors and the piety of our ancestors we owe it that our livings are in general the most respectable of any in America. What a pity they cannot be suffered to remain so; but, with grief, we behold a very different spirit now prevailing." They fear that by the proposed inspection law their salaries will be reduced not only below their present standard, but, in many cases, "far below even a decent competence." To attack the clergy is to attack the church, and to do that is to attack the Proprietary's prerogative. They are persuaded that to support them will be unpopular, but are confident that Eden's conduct rests on a "firmer basis than the popular favor, even that of truth, justice and public utility."

We have already seen that Eden, though firm in asserting

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[1] *Maryland Gazette*, Oct. 9, 1771.

[2] Rev. Robert Reed advertised in the *Maryland Gazette*, January 5, 1774, that he will open a boarding school to help out his salary, which has been reduced one-half by recent measures.

[3] Twenty-one signers. Allen Papers, Vol. I. No. 90.

what he believed were the legal rights of the Established Church, was no blind partisan of that body, but placed the interests of the province and the Proprietary before those of the establishment. What the rights of the Anglican Church were in Maryland seemed at first an easy question to decide. With the expiration of the fee bill, which had replaced the old law for the time, it was thought the old law of 1702 came again into force. By this the clergy received a larger allowance, forty pounds of tobacco per poll, instead of thirty. This law had been enforced without question for many years after its first enactment and until growing hostility to the church during recent years had caused a reduction of the amount to be paid. Under this law, as Samuel Chase clearly said, in two opinions given to Rev. Mr. Barclay on April 3 and May 29, 1772, the clergy may sue either on the sheriff's bond for the tobacco he had received and not turned over to them, or the sheriff himself, for money had and received. The sheriff may levy on delinquents' property for this as for other unpaid taxes. The county courts had no discretion as to assessing the amount, which the sheriff must collect, whether the county court has made the assessment or not. In either case the clergyman has a right to receive his forty pounds per poll.[1]

However, the question became much more difficult of solution when, in June and July, it began to be queried whether the act of 1702 was valid. The ground for this doubt was the fact that King William III, in whose name the Legislature had been summoned, had died before it had met and enacted the law. It was, therefore, claimed that it was no law at all. The friends of the law first answered[2] that, in that case, the earlier act of 1700, repealed by the act of 1702, was still in force, and that also imposed a payment of forty pounds per poll.[3] To this the enemies of the law replied[4]

[1] *Maryland Gazette*, Aug. 6, and Sept. 3, 1772.
[2] Maryland was a royal province in 1702.
[3] *Maryland Gazette*, July 30, 1772.
[4] *Maryland Gazette*, Aug. 6, 1772.

that the act of 1704, which was a general repeal of all prior laws, with a few specified exceptions, had put an end to any life the law of 1700 had.

This argument, retort some of the friends of the law,[1] is of no consequence; the act of 1704 confirms that of 1702 and at least four subsequent laws[2] recognize it as valid. Others answer that the law of 1704 contains this clause: "Saving always to all and every person or persons, whatsoever was and is his and their rights and benefits, which he and they had by the former acts of Assembly, anything in this present act containing to the contrary notwithstanding," and, as the clergy had undoubted rights under the act of 1700, these were here preserved.

Chase had been a violent member of the popular party, and his opinions, which were published at this time, created not a little excitement. It was even claimed that one of them at least was a forgery,[3] published to raise false hopes on the part of the clergy. Others said[4] that the opinions were guardedly worded, expressing what would be the law if the statute were valid, without giving any testimony to its validity; while others maintained that the former opinion at least "gives undoubted testimony" to the validity of the law, and shows the inconsistency of Chase in making such violent speeches against it in the Assembly.

Upon the tumult comes the majestic voice of William Paca. This man seems to me the ablest constitutional lawyer of the province at the time and to have possessed remarkable keenness of insight and logical power. In a long opinion, dated August 15, 1772, and printed in the *Maryland Gazette*,[5] he advances cogent arguments against the validity of the law. He shows that in all similar cases acts passed after the death of the King in whose name the session was

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[1] *Maryland Gazette*, Aug. 13, 1772.
[2] 1773, ch. 10, 1715, ch. 24, 1730, ch. 23, Inspection Law of 1763.
[3] *Maryland Gazette*, Aug. 20, 1772.
[4] *Maryland Gazette*, Sept. 3, 1772.
[5] *Maryland Gazette*, Sept. 10, 1772.

called have been expressly confirmed by subsequent legislation, and that Maryland's history had such an instance after the death of Charles Lord Baltimore. The statute continuing all commissions for six months after the death of the King[1] did not apply to Parliament, nor was prevention of the dissolution of Parliament thereby intended. The Assembly is the Parliament of the province, and hence the same rule holds as to it. The act of 1702 was, therefore, void when passed. It has never been properly confirmed. Every confirmation must be either express or implied. There has never been an express confirmation of the law, and the very idea of an implied confirmation of a void law is ridiculous. The saving clause of the act of 1704 has no force here, for it only refers to such rights as had accrued and not to future ones. As to the acts recognizing the law of 1702, their recognition is of no account if the statute be void, for a recognition of a law by another can only serve as presumptive evidence of the existence of the former.

A Talbot county writer,[2] taking the same side of the question, showed that the act of 1700 was never assented to by the Crown, but returned for amendment by the Assembly, and the amended act was that of 1702. Thus the act of 1700 cannot possibly be in force, and, as the act of 1704 does not "assume any independent, irrelative power of establishing a certain mode of public worship," and there is confessedly no subsequent law, the establishment of the church entirely depends on the validity of the act of 1702.

Other writers[3] take up one side or the other, but add but little to the controversy until the able pen of Rev. Jonathan Boucher[4] appears to contend for the clergy.[5] He and his

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[1] 7 and 8, Wm. III., ch. 27.

[2] A.B., *Maryland Gazette*, Aug. 27, 1772.

[3] *Maryland Gazette*, Aug. 27, Sept. 3, 17, Oct. 17, 1772, Jan. 7, 1773.

[4] Dec. 31, 1772, Jan. 7, 1773, *Maryland Gazette*.

[5] Rev. Jonathan Boucher. The best account of his life is found in Notes and Queries, 3d Series, Vol. IX, pp. 75 and 282. 5th Series,

vestry, among whose numbers were both Chase and Paca, engage in fierce conflict, but chiefly use the arguments already advanced or such as are personal to the combatants.

CHAPTER VII.

The Controversy Between Antillon and First Citizen.

In the beginning of 1773 the quarrel over the Governor's proclamation had become chronic,[1] when a famous newspaper controversy caused the malady again to assume an acute form. Daniel Dulany, the head of one of the most illustrious families in the province and the man who had gained great praise from the patriots for his forcible defense of their cause at the time of the stamp act, was the one to open the discussion. This he did in support of the Governor, being now opposed to the popular side. On January 7, 1773, he published in the *Maryland Gazette* a dialogue purporting to be between two citizens, in which the first took the task of attacking the proclamation and was worsted in the argument by the second citizen, who advocated the Governor's side.

Charles Carroll, of Carrollton, a wealthy Roman Catholic land-owner, who had been educated at the Jesuit College at

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Vol. I, p. 102; Vol. V, p. 501; Vol. VI, pp. 21, 81, 41, 161; Vol. IX, pp. 50, 89, 311, 371; Vol. X, p. 93.

See also *Gentlemen's Magazine*, Vol. LXXIV, p. 591. Boucher claimed to have written all Eden's speeches, revised the laws of Maryland and written many papers for the Council. He speaks of Annapolis in high terms. "It was then the greatest town in North America, and many of its inhabitants were highly respectable as to station, fortune, and education. I hardly know a town in England so desirable to live in as Annapolis was then," N. and Q., 5th Series, Vol. VI, pp. 21–22.

[1] McMahon, p. 388, April 10, 1773. Lord Dartmouth writes Eden, "I consider your continuance in the Government of Maryland as a circumstance of very great advantage to the King's service."

St. Omer, at Rheims, and at Paris, in France, and at the Temple in London, felt that Dulany's presentation of the popular side had not been adequate, and determined to state it more fitly. So, on February 4, he published a rejoinder to Dulany's article, signing himself First Citizen.

To this Dulany replied in turn in the issue of February 18, signing himself Antillon, and the controversy was fairly begun. Further letters of Dulany's appeared on April 8 and June 3, and answers by Carroll were printed in the issues of March 11, May 6 and July 1. Others joined in the fray, and letters replying to Antillon, written by other members of the popular party, were published in the *Maryland Gazette* for March 4, April 1, May 13 and June 10, while the Governor found other defenders on March 18, March 25 and May 13. The *noms-de-plume* of these antagonists were such as were characteristic of the time. Did Protestant Planter and Free Patriot support First Citizen? Then Plain Truth and Brutus came to the support of Antillon. The controversies between the clergy and their vestries were going on meantime, and the papers must have furnished interesting reading for all classes. In the latter controversies, as we have seen, Rev. Jonathan Boucher and his vestry were most conspicuous, though we find such minor combatants as "Clericus Philogeralethobolus."

The popular opinion has been that Charles Carroll had much the better of the argument with Dulany. In this opinion I do not join, though I admit most readily that in Carroll, Dulany found a worthy antagonist and that Carroll's success in arousing the people was most noteworthy, especially when we consider his religious faith. The last was by no means popular in Maryland at that time, and I regret to have to record the fact that Dulany strove in an unworthy manner to use that fact to Carroll's prejudice. My conclusion is that Dulany's arguments found their best refutation in the paper written by William Paca, Thomas Johnson and Samuel Chase.

It is interesting to observe how, in the bitterness of their

attack upon his measure, even the Independent Whigs do not lose their esteem for Governor Eden. His personal popularity still continued; the heaviest accusation they could bring against him was that he had been influenced by the members of his Council to follow the course he had pursued. "O Eden! Eden! had you relied upon your own manly judgment in every political case!" they cry out; "had you been guided by your own benevolent feeling, upon late important subjects, had you rejected that imprudent and often-repeated project of daring ministers in placing the Governor in the front as a screen to themselves the moment they are scorched by the patriotic fire of the delegates of the people, Eden had been a little god below."[1] Carroll, the mouthpiece of the opposition, joins in the tribute, and writes: "I know him to be generous, of a good heart, well disposed, and willing to promote, if left to himself, the happiness and welfare of the province; but youthful, unsuspicious and diffident of his own judgment in matters legal and political, failings (if they deserve the name) that have caused him to repose too great a confidence in you" (i. e. Antillon-Dulany).[2]

In their desire to exculpate the Governor from blame, the Whigs likened his position to that of a monarch and applied to him the maxim, "The King can do no wrong." This application Antillon repelled, writing, "If the Governor, in issuing the proclamation, acted on a conviction of its propriety (and he has most expressly declared he did), he desired a satisfaction and honour from his firm and open avowal which he will hardly be induced to relinquish and shelter himself under the infamous doctrine of your most servile adulation that the Governor is a king and can do no wrong."[3]

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[1] *Maryland Gazette*, Feb. 11, 1773.

[2] *Maryland Gazette*, Mch. 11, 1773.

[3] *Maryland Gazette*, Feb. 18, 1773. The analogy with the regulation of Fees in New York and Jamaica was insisted on by the administration, Aug. 5, 1773.

Dulany puts the case for the proclamation thus: "The proclamation binds no further than it is legal; its legality is determinable in the ordinary courts of justice; it directs no method of compulsion to enforce compliance from the people, nor gives any remedy to the officer for the recovery of his dues, to which he is not entitled by the rules of law; if legal it is not oppressive; if not legal the severest epithet that justice can admit is that it is useless to the officer, though of some service to the people in the restriction to which he is subjected."

Carroll answered:[1] "No; it is taking money without law, as Charles I took ship-money. If the Governor may limit fees by proclamation, why may he not raise them? And, as to taking the matter to the courts, are not the Governor and Council the highest court and thus judges of their own case?"

Antillon now claims: "Though the old, or established, rates of fees are not to be altered, increased or augmented, yet when fees are due and the rates of them not yet established they may be settled without the legislative authority, because the principle of the authority remains, and it ought to be active when the reason of it calls for exertion."

In answer to this, First Citizen tells us that the fees are new, as the law has expired, and the Governor is, therefore, laying taxes.

Does Antillon argue that the judges in Westminster Hall settled fees, and, therefore, the Governor of Maryland may? First Citizen boldly tells him,[2] in an able paper, that "the inference will not be granted unless you prove that the King, by his sole authority, contrary to the express declaration of his commons, has settled the fees of officers belonging to the courts of law and equity in Westminster Hall, that is, hath laid out new fees on the subject at a time when they were no longer paid out of the royal revenue, but taken out of the

[1] *Maryland Gazette*, Mch. 4, 1773.
[2] *Maryland Gazette*, May 6, 1773.

pockets of the people." The fees of officers, he proceeds to tell Antillon, have been established by the Legislature for many years past in this province, and the act establishing them was made temporary; that, on a change of circumstances, an alteration of the fees, if expedient, should take place.

Carroll then turns to the history of the province, and there finds that, as far back as 1638, there was a law passed for the limitation of officers' fees, and that in 1692 the Governor's authority to settle fees was expressly denied by the Lower House, which voted unanimously "that it is the undoubted right of the freemen of this province not to have any fees imposed upon them but by the consent of the freemen in a General Assembly." To this the Governor then agreed, and, therefore, formally relinquished the claim to settle fees by prerogative. The popular claim has ever since then been maintained by the Legislature, and the laws for limitation of officers' fees "ought to be considered as so many strong and express denials of the Proprietary's authority to settle fees and as so many acknowledgments, on the part of the government, of its illegality." Consequently there are no old and established fees, for all fee laws were temporary. Therefore, "fees settled by proclamation are new fees. . . . new fees are taxes, and taxes cannot be laid but by the Legislature." The sum of the whole matter is that "fees settled by one or two branches of 'the Legislature are' an unconstitutional and illegal tax."

Such is the summary of Carroll's able argument. Dulany answered[1] it in an extremely long letter, insisting that the right of levying fees was in the hands of the Governor and Proprietary; that the 1692 precedent was of no value, because there was then an act in force to regulate fees, while now there was none. The Governor having authority to levy fees when there was no act, did right to issue a proclamation, which really prevented extortionate fees; while it provided

[1] *Maryland Gazette*, June 3, 1773.

no means for the enforcement of payment. Consequently the officer was forced, as while the fee bill existed, to resort to the legal remedy of execution to obtain his payment. This could be resisted, and the matter thus brought to court. Antillon's last letter is his ablest. After Carroll replied to it[1] this newspaper controversy ceased.

While the discussion in the *Gazette* was in progress important changes had occurred. On February 25 Eden still further prorogued the Legislature until May. Before that date came, a new commission[2] to the Governor arrived from Henry Harford, the new Proprietary, and, on its receipt,[3] Eden dissolved the Assembly and issued writs for a new one. Frederick, last Lord Baltimore, had died, leaving the province to his illegitimate son and making Eden one of his executors.

CHAPTER VIII.

Continuance of the Controversy.

The canvass for members of the Lower House was a bitter one, and the election showed the choice of an Assembly as thoroughly opposed to the proclamation as the former one had been. The proclamation was hung in Frederick and Anne Arundel counties. Addresses from the newly-chosen delegates to First Citizen appear in the *Maryland Gazette*. "Mark Antony" buries the proclamation in Baltimore.[4]

The Governor's policy did not lack defenders among the people, who drew up protests in answer to the addresses of Carroll, and even printed scurrilous poems about him.[5] Amid such excitement the Assembly met on June 15, 1773. William Tilghman was chosen Speaker. Eden opened the

[1] *Maryland Gazette*, July 1, 1773.
[2] Dated Mch. 2, 1773.
[3] Apr. 29, 1773.
[4] *Maryland Gazette*, May 14, 20, 27 and June 10, 1773.
[5] *Maryland Gazette*, June 17, 24, 1773.

session with a speech, calling the attention of the body to the fact that they had a new Lord Proprietary, and offering to prorogue the Lower House if they prefer it.

It was just about harvest time, but the delegates felt their duty demanded that they stay, and they remained in session until July, when they were prorogued until October.

The Lower House, on the day after its organization, reaffirmed its resolves of October 3, 1771. This showed a stubborn spirit of independence, which augured ill for the success of the Governor's cause. Their answer to his address on June 17 was as little conciliatory. They acknowledge that the time is inconvenient, but will try to make such laws as will promote the general welfare, and "whenever your Excellency is pleased to concur you will certainly obtain the thanks of a grateful people." Eden had mentioned that the King takes interest in the province. To this they dryly reply that this announcement gives them "singular pleasure," and that they believe "that the conduct of the late representatives, so generally agreeable to their constituents, when fully known to the father of his people, cannot but meet with his royal approbation." All this foreboded no peace. On June 18 the Lower House resolved not to bring in a bill for the regulation of tobacco by a vote of twenty-four to twelve, Paca, Chase and Johnson being in the minority. Five days later they decide to have such a bill prepared by a committee of eleven, seven of whom were in the minority on the earlier vote. I do not pretend to explain this change of front.

It is important to note that this bill dealt with the inspection of tobacco alone. At the same time a committee of ten, seven of whom were on the former committee, was appointed to prepare a separate bill for the regulation of officers' fees. This separation of the bills is an important step. The next day a third bill for the support of the clergy was brought in. This bill was made on the "principle of equality" which prevailed in Virginia, and was passed by the Lower House on June 25. It provided that each min-

ister, without regard to the size of his parish and exclusive of his glebe, should have 32,000 pounds of tobacco yearly, compoundable at twelve shillings and sixpence per hundredweight. The vote on the bill was thirty-nine to six, though the amount each clergyman should yearly receive was carried only by twenty-six to twenty-three, many of the patriotic leaders voting against it.[1] The Upper House rejected the bill on the next day. On June 19 the Lower House, in committee of the whole on the state of the clergy, had passed resolutions that they considered the act of 1702 as not legally enacted. These resolutions the Upper House now answered, stating that they consider that act in force, and will be glad to discuss the matter. They state that the clergy bill is objectionable, because the provisions for equality of salaries would be oppressive on incumbents of small parishes and would "damp the emulous exertions of merit, which the hopes of preferment are wont to animate."

The bill for the inspection of tobacco was brought in on June 29. The Lower House decided by a vote of twenty-nine to fifteen not to postpone the matter until another session, the popular leaders voting in the affirmative. Two days later the bill was passed, the yeas and nays not being called. The Upper House promptly rejected the bill.

On June 21 the committee to inspect public offices[2] was directed by the Lower House to enquire what fees are taken and by what authority. Three days later they report, filing answers to their queries made by the clerk of the Provincial Court, the Register in the Prerogative Court, the Register in Chancery and the clerk of the Land Office. All state that, by order of their superiors, they charge the fees established by the old law and the proclamation.

The Lower House did not pass any fee bill at this session, but contented itself with expressing its sentiments in the

[1] Johnson, Chase, Smallwood, Paca, Hammond voted, "No," as did Ennals.

[2] The Upper House at this session, as at several others, rejected a Lower House bill to prevent the buying and selling of offices.

form of resolutions passed on July 2, the day before the prorogation, and doubtless largely the cause of that measure.

These proclaimed that "this House is constitutionally invested with a power to commit to the public jail, by way of punishment, any person for breach of privilege or contempt, there to remain until discharged by order of this House," and that "this House, as the grand inquest of the province, has an unquestionable authority, founded on precedent and long uninterrupted usage, to hear and enquire into all complaints and grievances, and, as incidental to that authority, has constitutionally a power to commit any person for any crime whatsoever." They follow these by reaffirming the resolutions of October 18, 1771, and no one now dissents to the declaration that the advisers of the proclamations are "enemies to the peace, welfare and happiness of this province and the laws and constitution thereof."

After such an exhibition of firmness on the part of the Lower House there is little wonder that the Assembly was prorogued, though Eden, in his closing address, makes little reference to the resolves, but assigns the causes of prorogation to be the slimness of attendance in the Houses and the small likelihood that further bills would be passed. He even praises the action of the Assembly, saying that he is "pleased to think that the province will reap great advantages from the acts passed this meeting."

A few bills were passed: to enlarge Baltimore town; regulate laying attachments and prevent counterfeiting;[1] but the most interesting feature of the session was the passage of the resolutions against the proclamation, which caused the prorogation of the Assembly.

The controversy did not cease with the adjournment of the Legislature. In proroguing it the Governor imputed the opposition "to the aims of faction and the rage of disappointment," and told the Assembly that "the proclamation was

[1] Recommended by a message from Eden.

solely for the benefit of the people of this province, by nine-tenths of whom he had the greatest reason to think that it was understood." These were bold words and hardly justified by the facts. It is true his extreme admirers wrote of his conduct[1] in terms such as the following: "That serenity of temper which our chief magistrate showed when the measures of administration were censured can only proceed but from an elevated soul and a mind conscious of its own rectitude. To add to this, if advantages of birth, an acquaintance with the liberal sciences, knowledge of the world and attractive affability constitute the gentleman, I am informed Governor Eden has the greatest pretensions to that distinguished character."

It is also true that prominent men like John Hammond were ready to take up the Governor's side of the controversy, when Dulany ceased to champion it, and to quote from the rich store of their knowledge of classics, of English literature, English history and English law in support of their contention.[2] But the majority of the leaders and probably also of the people took the side of the opposition, and Thomas Johnson, Samuel Chase and William Paca answered Hammond's arguments in a very able paper.[3]

In all his measures Eden had the hearty support of Lord Dartmouth and the English Government,[4] but from the Proprietary, himself but a minor, he could receive no help. In such a condition of affairs he opened the session of the Assembly on October 23, 1773. In his opening speech he recommends joining with Virginia in the erection of a lighthouse on Cape Henry, doing away with lawsuits about the boundaries of land through variations of the compass, im-

[1] *Maryland Gazette*, August 5, 1773. They point to precedents in New York and Jamaica for his action.

[2] *Maryland Gazette*, August 29, 1773. McMahon, p. 394.

[3] *Maryland Gazette*, September 9, 1773.

[4] Dispatches, Nov. 4, 1772; Jan. 12, Feb. 9, Feb. 26, Apr. 10, Oct. 28, 1773. Governors forbidden to grant waste and unsettled lands till further pleasure of the Crown, Feb. 5, 1774.

provement of the public roads, whereby "general advantage will result from opening a communication between our merchants and distant settlers," and the establishment of a precise rule, whereby "the extent and proper application of the penal statutes of England may be sufficiently ascertained." He ever had at heart the interests of education, and recommended to the Legislature "the extensive utility which cannot fail to flow from an establishment in this province of a regular seminary for our youth, liberally instituted and supported," and expressed his "warmest wishes that it may engage your particular attention." The Baltimore newspaper endorsed this recommendation, but the Assembly was too much busied over things to pay much heed to it.[1] The Lower House tells Eden these things are "of consequence," but "matters of an important nature more immediately affecting the welfare of the province demand attention more pressingly."

The two Houses appointed committees of conference, but these could come to no agreement, and on October 29 Eden prorogued the Assembly until November 16. We still find controversial papers in the *Maryland Gazette*,[2] but are amazed to read in the *Maryland Journal*, whose editor, Goddard, as a Tory, that "this province is in a flourishing condition, and what contributes greatly to it is the unanimous and good understanding that subsists between the Governor and the Assembly."[3]

The journals of the Lower House are unfortunately lost for both of the autumn sessions of 1773. From the Upper House journal we learn that at the October session they rejected a Lower House bill for regulating tobacco, but offered

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[1] *Maryland Journal*, Oct. 23, 1773. *Maryland Gazette*, Oct. 14, 1773. Nothing was done in the matter, though Eddis thought the effort would be successful, and Gov. Bladen's mansion would be used for the college. The building is now McDowell Hall of St. John's College. Eddis, p. 146.

[2] *Maryland Gazette*, Nov. 4, 1773.

[3] *Maryland Journal*, Nov. 6, 1773.

to accept it if the Lower House would include the maintenance of the clergy in the bill, according to the old act, giving the alternative, after the death or removal of the present incumbent, of taking tobacco or four shillings common money from each taxable, and would also include officers' and lawyers' fees, according to the proclamation. They were not yet ready to yield one inch.

The November session began on the 16th. Two days later the Speaker, attended by *all* the members of the Lower House, brought up a bill for inspection of tobacco to the Upper House. The latter body felt that it must yield at last, and, on the 25th, passed the bill, with some unimportant amendments and one important one, changing the duration of the act from fourteen to three years. They then return the bill to the Lower House, asking that they agree to the amendments and include a provision for the clergy, as recommended at the last session. But they agree to assent to a mere tobacco bill "distinct from and independent of every other object." The Lower House had won half its fight. As to the clergy, the letter says nine vacancies have already occurred since October, 1771, and the planters may regret rejecting the proposition. The public resolve of the Lower House that the Act of 1702 is not in force cannot affect the question of its validity, and should it be declared legal, as the Lower House had *formerly* thought it was, the proposition would avoid inconveniences. Without provision for the clergy the act may not prove satisfactory, so the duration has been shortened. The Lower House refused to add the clerical provisions, and, the Upper House yielding, the bill was signed by the Governor on November 30. The provision for the clergy was put in a separate bill, passed by the Lower House on December 16, by the Upper on the 21st, and, being signed by the Governor, became a law of the province. This act[1] was not to influence the determination of the question respecting the validity of the tax of forty

[1] Act of 1773 (December), ch. 28.

pounds per poll previously laid, but it provided that, for the ensuing twelve years, every taxable inhabitant must annually pay thirty pounds of tobacco or four shillings in money towards the support of the clergy of the Church of England. The election between tobacco and money was only given to those who paid before June 10, and fitting penalties were enacted against delinquent taxpayers and dishonest sheriffs. Thus was the question of the clergy solved.

The three bills dealing with the other points of difference —buying and selling of offices, officers' fees and attorneys' fees—were all lost in the Upper House. So, while the Lower House gained a victory in getting part of the question acted on separately, the Upper House were masters of another part of the field, and fees still were collected according to the proclamation.

It is true, however, that the bitterness of the struggle appears to die away. The quarrel had not as yet broken up the social life of the colony. The love of horse-racing still kept up the regular meets, in one of which, at Nottingham, in June,[1] Eden's bay horse, "Why-not," distanced both his competitors in the first heat, although "Why-not" had run three very hard four-mile heats at Philadelphia on that day fortnight, and had since traveled from thence in very hot weather. In the fall races at Annapolis "Why-not" did not have so good success, being beaten by Col. Wm. Fitzhugh's famous horse, "Regulus."[2]

The western part of the State was filling up with German settlers, whose industry and emulation were astonishing and caused Frederick county to improve amazingly.[3] In Frederick town there were plenty of stocking and worsted weavers, and the church was said to be the only one in the prov-

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[1] *Maryland Gazette*, June 3, 1773.

[2] *Maryland Gazette*, Oct. 1, 1773, *Virginia Magazine of History and Biography*, Jan. 1895.

[3] *Maryland Gazette*, Nov. 6, 1773. S. Eden's Dispatch to Dartmouth, Jan. 29, 1773.

ince with a steeple. In the growth of Frederick and Baltimore were already to be seen the beginnings of that influence which should many years later overturn the constitutional system of the State.[1] In Southern Maryland the prosperity was not so great. There being no act to regulate the inspection of the staple tobacco, it had fallen into great disrepute in England and no longer commanded as high a price as formerly.[2]

The Assembly passed no acts at its October session, but the November one, which lasted until December 23, was an extremely fruitful one. Both sides seem to have tried to attend to other matters of importance to the provinces besides the question of fees. Among the acts passed at this session we find two establishing new counties, one called Harford, for the new Lord Proprietary; the other Caroline, in honor of Governor Eden's wife. In this latter county, land was to be bought at Pig Point and the county seat built there, bearing the name of Edentown. The initial vowel has been lost, but Denton is the county town of Caroline county until this day, and thus, unknown to most of us, we still commemorate our last provisional Governor.[3]

Other acts add land to Baltimore, establish a market there, provide for the relief of the poor in that town, appropriate money towards erecting and maintaining a lighthouse on Cape Henry, and for the covering of the "stadt house" roof with copper. The criminal business of Baltimore county is regulated, provision is made for the preservation of wild deer, and the law with reference to deposi-

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[1] See Steiner on Maryland Electoral College.

[2] Eden's dispatch to Dartmouth, Aug. 19, 1773.

[3] Statute of Nov., 1773, ch. 6. A town to be known as Edenburgh was advertised by Geo. Hunter, as laid off at Chapel Point, near the mouth of Port Tobacco Creek, in the *Maryland Gazette* of Sept. 29, 1771. This enterprise apparently came to naught. Eden and Caroline streets in the eastern part of Baltimore City are named in honor of Governor Eden and his wife.

tions is amended. With such a good record, the Assembly might well feel they had earned a Christmas recess.

But chief of all their acts was one which put an end to much difficulty in private affairs and which provided "for the regulation of the staple of tobacco and preventing frauds in His Majesty's revenues." The passage of this act was a victory for the popular party, as at previous sessions the Upper House had refused to separate this measure from the fee bill and had insisted in passing both in one act. This new law was felt to be so important that place for its important provisions was found in the *Maryland Gazette*, an unusual honor.[1]

CHAPTER IX.

The Last Legislature.

The Assembly, which had been prorogued until April 4, 1774, was summoned to meet on March 23, that preparation might be made for the Governor's leaving the province for a time. He had been appointed one of the executors of the will of his brother-in-law, the last Lord Baltimore, and felt that a trip to England was necessary to attend to this business and to other private affairs. As early as August 21, 1772, when transmitting to Lord Dartmouth the report of the proceedings of the last session of the Assembly, he speaks of his needing to return home. He states in this letter that a "severe fit of illness" and the "interesting situation of my affairs from the decease of the Lord Proprietary," have delayed the sending of the enclosed report, and adds that, probably, in a short time, "from the critical situation of my private affairs with regard to the disposition made of this province by Lord Baltimore's will, I may be under a necessity of soliciting your Lordship to procure me His Majesty's leave to be a short time in England to attend thereto." He fur-

[1] *Maryland Gazette*, Dec. 2 and 9, 1773.

ther states that he has authorized the Solicitor General, or his brother, Mr. Eden, of Lincoln's Inn, to make such application for him, should his immediate presence be needed. Mrs. Eden went "home on this business" in Captain Eden's ship on August 27, 1772, and seems never to have returned to Maryland.

The death of Lord Baltimore[1] on September 14, 1771, had dealt a heavy blow to the Proprietary Government. Debauchee and rake though he was, caring nothing for his province save as a source of revenue; yet he represented the family to which Maryland owed so much, and naturally received some of the loyalty which was his family's due. At his death, however, not only did the male line of his family and the title of Lord Baltimore become extinct, but the province received as its Proprietary, by the terms of his will, not one of the collateral branches of the Calvert family, but Henry Harford, an illegitimate son of the last Lord. Whatever affection may have been felt for the old family vanished when in its place came a minor and a bastard.

In case Harford died without heirs, the province should first descend to his sister, Frances Mary Harford, and then to Caroline Eden, the wife of the Governor. Both she and her elder sister, Mrs. Louisa Browning, were left £10,000 by the will, on condition they accept it. Hugh Hammersley, Baltimore's secretary, and Eden were made executors.[2] The elder sister had been left the reversion of the province by her father, Charles, Fifth Lord Baltimore, and there would probably have been a long legal contest over the sixth Lord Baltimore's will had not the Revolution interfered. The contest had, in fact, been begun in the Court of Chancery.

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[1] Eden issued a proclamation, on Mch. 10, 1772, suspending the issue of Land Office Warrants for the present, probably on account of Lord Baltimore's death. The suspension continued until May 30, 1773.

[2] Scharf's Maryland II., 138.

The Assembly,[1] which met in March, 1774, adopted the usual addresses to the Governor, perhaps a trifle more formal than usual. The Lower House grumbled a little about the "inconvenient season" in which they are called together, and promise to consider the recommendations of Eden's speech.

The Upper House are naturally more cordial in their response: "The experience we have hitherto had of your excellency's good intentions to promote the welfare and prosperity of the Province makes us most ardently wish you may speedily settle those affairs, which require your personal attention in England, and that we may soon have the pleasure of seeing your excellency again exercising the powers of government in Maryland."

On March 28 the Lower House appointed a committee to bring in a fee bill. Its report was made three days later, was debated[2] until April 2, and was then passed. It was rejected by the Upper House on the 7th, and so the proclamation still regulated the rates of fees until the Provisional Government replaced the Proprietary one. Eden had virtually won the victory in the fee question.

Another bill causing controversy at this session was one to preserve the independence of members of the Lower House. We have no knowledge as to what this act was, but know that it passed on April 16 by a vote of twenty-nine to thirteen, Johnson, Chase and Paca being in the minority. The Upper House, on the next day, amended the act and returned it. The amendments were evidently meant to kill the bill and provide that each delegate take the oath that he has not deceived any elector to gain his vote, and will not

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[1] At this session we find Somerset and Worcester are seeking for a Pocomoke canal, *vide* L. H. J., Apr. 5.

[2] Mch. 3, Chancellor not to be allowed a fee for a final decree. For 33, against 13, including Johnson, Chase and Paca. Apr. 1, no fee to sheriff for executions, vote, 21 to 13, Johnson, Chase in minority again.

misrepresent the views of any other delegate to gain an elector's vote; that no person who hath enjoyed any office of profit, or hath applied, even though unsuccessfully, for such office, shall be chosen delegate, under penalty of a fine of £1000 sterling and disqualification to hold any office of honor or trust; and that in the future no pay be allowed legislators. The Lower House immediately rejected the amendments, and, by a vote of twenty-five to ten, referred the bill to the second Tuesday in July for consideration. In other words, it was indefinitely postponed. Johnson was here in the majority, Chase in the minority. The votes of the popular leaders are often very hard to explain, as we know little of the motives which actuated them.

The session lasted until April 19. The laws for the most part are not of great importance,[1] dealing with such subjects as the improvement in public roads in Frederick County,[2] the relief of languishing and insolvent debtors,[3] the regulation of gauging of casks in Baltimore, and the prohibition of throwing out ballast in harbors.[4]

When the session closed Eden prorogued the Assembly until July 11, but it was never to meet again under the Proprietary Government. Under the last law passed at this session, Hanson placed this note in his collection of the Laws of Maryland: "Here end the laws under the Proprietary Government. The arbitrary acts of the King and Parliament of Great Britain having manifested a settled design of enslaving her colonies in North America, a determinate spirit of opposition, in a little time, pervaded every part of the Continent, which now belongs to the United States. From this period, notwithstanding the mere forms of the ancient government were permitted a little longer to exist, there

[1] They agreed to pay Chas. W. Peale £100 for his picture of Lord Chatham.

[2] Act of 1774, ch. 21.

[3] Act of 1774, ch. 22 and 28.

[4] Act of 1774, ch. 23.

was no real authority, except that derived immediately from the people."

Desiring not to break the main thread of our narrative of the struggle between Eden and the popular party, little has been said of other matters since the beginning of 1772. Indeed we know too little of these lesser matters.[1] Through these years the fine "Stadt house," which the Legislature had authorized in 1769, was rising to tower above the houses of the city, as it does today. The cornerstone of this edifice was laid by our Governor on March 28, 1772, and tradition says that at high noon, when he touched the stone with a hammer, a clap of thunder was heard from a clear sky.[2] The more prosaic account in the *Maryland Gazette* makes no reference to this, but refers to the "cold collation" which was served, the few loyal and constitutional toasts which were drunk, and the three cheers from the workmen, which ended the ceremony.

Among the friends made by Eden was a quiet Virginia militia colonel, who was to be called the father of the country which should be formed from the thirteen colonies. As early as July 9, 1771, George Washington wrote to Rev. Jonathan Boucher, who was teaching young Custis, that in the event of the boy's going to England, as had been suggested, "I should think myself highly favored and him much honored by Governor Eden's letters of introduction."[3] Two months later,[4] when Washington went to Annapolis for the races, he dined at the Governor's mansion.[5] In the following spring Washington writes to Boucher, regretting that the Governor and Mrs. Eden cannot come at that time to Mt. Vernon. Washington adds that he also regrets he did not see Eden when recently in Annapolis, having his por-

[1] Eden was away from Annapolis for a time in January, 1772. See *Maryland Gazette*, Feb. 6, 1772.

[2] Ridgely's Annals of Annapolis, p. 146.

[3] Ford's Writings of Washington II., p. 333.

[4] After dinner to the play at 6 P. M., then to the ball.

[5] Sept. 24, 1771.

trait painted, and asks Boucher "to assure Mr. and Mrs. Eden, which you may do with great truth, that Mrs. Washington and myself shall think ourselves very happy in seeing them at Mt. Vernon whenever they can make it convenient to give us the honor of their company."[1] Such language shows considerable intimacy between the two men. On a later visit to Annapolis, in May, 1773, Washington dined and lodged with Eden.[2]

All sorts of distinguished strangers were entertained at this hospitable mansion, from Lord Dunmore, the Governor of Virginia, to the Indians who stayed there five days in the summer of 1772.[3] Nor were the Governor's friends solely those who favored the measures of the English Government. With no one was he more intimate than with Col. William Fitzhugh, who, after his second marriage, had removed from Virginia to his wife's estate of Rousby Hall, in Calvert County. Yet Fitzhugh was so far from being a ministerialist that he wrote,[4] on June 23, 1774: "This is a crisis when every good member of the community ought to exert himself in the country manufactures. Our *all* depends on the virtues of steadiness, frugality and industry."

The kindliness of Eden's nature is well shown in the few letters of his extant to the Fitzhughs and to Rev. John Montgomery, with whom he occasionally exchanged Latin epistles. His many friends were his chief strength in the colony, and though all his characteristics were such as to call forth friendship from the Maryland gentry, probably none had more effect therein than his love for horses and racing. Of this we have already spoken, and we see, as the years go on, this trait loses none of its strength. Sometimes his horse is unfortunate, as when Fitzhugh's "Regulus" beats Eden's "Why-not" on October 1, 1773, but at others, as at the Not-

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[1] Ford's Writings of Washington II., p. 382.
[2] May 21 and 23, 1772.
[3] *Maryland Gazette*, Feb. 24, 1774, *Maryland Gazette*, Aug. 6, 1772.
[4] Allen Papers, Vol. 1, No. 81.

tingham races in June, 1774, "Why-not" wins both races in which he is entered, and Eden's other horse, "Slim," wins the only other one of the meet.[1] Not only in Maryland races are his horses entered, but they are sent to try for prizes in races in other colonies, as at Philadelphia.[2]

These pleasant features of a life which had much of struggle in it were soon to pass away. Eden's butler had long advertised to have bills against him brought in before his master's departure. The affairs in England seemed to demand Eden's immediate presence, and so, all being ready, he sailed on his brother's ship on May 28, 1774.[3]

Richard Lee, president of the Council, issued a proclamation assuming the government as "President and Commander-in-Chief of the Province of Maryland," but he was not possessed of sufficient strength to stem the tide of popular feeling that was arising against the English Government. It is doubtful whether Eden could have done much had he remained in Maryland; but certainly his departure came most opportunely for the plans of the popular party.

Even before he left the province, resolutions of sympathy had been sent by the people of Annapolis to those of Boston,[4] and May 25 there was chosen, at a popular meeting, a Committee of Correspondence for Annapolis, which should join with like committees from other parts of the province to form one general committee. At this same meeting was adopted a series of resolutions demanding the repeal of the Boston Port Bill, advocating non-importation and an association to enforce it, urging lawyers to refuse to bring suit against a Marylander for any debts owed to an Englishman,

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[1] Eddis, p. 106, says than the Annapolis Races' "Few meetings in England" are "better attended" or have "more capital horses." In June, 1771, Eden attended the Oxford Races, *vide* letter of Matthew Tilghman, in Baltimore *Sun* of October 3, 1895.

[2] *Maryland Gazette*, May 26, 1774.

[3] He made a short stop at both Fitzhughs' on the way. Eddis, p. 161.

[4] *Maryland Gazette*, June 2, 1774.

and proposing to cut off intercourse with any province which will not join in these measures. There was so much dissatisfaction with these resolutions on the part of the loyalists that, on May 27, a second meeting was called in Annapolis to act upon them. At this meeting all the resolutions, save that regarding the payment of debts, were agreed to, either unanimously or by great majorities, and that one was carried by a vote of forty-seven to thirty-one. There was a spirited protest made against this over the names of Lloyd Dulaney and about 160 others. They rightly say the resolution "is founded in treachery, inasmuch as it is big with bankruptcy and ruin to those inhabitants of Great Britain, who, relying with unlimited security on our good faith and integrity, have made us masters of their fortunes, condemning them unheard because they do not secure the repeal of the Boston Port Bill, and that such a resolve is sure to cause the destruction of Maryland's credit."

Other counties, however, had even forestalled the action of the patriots of Annapolis. Kent County, on May 18, had sternly protested against the importation of tea; Talbot County adopted patriotic resolves on May 30, and was followed by Baltimore County on May 31, by Kent on June 2, by Anne Arundel on June 4, by the lower district of Frederick on June 11, and by Charles on June 14.

From delegates elected at such meetings was formed the first Convention of the Province of Maryland, which met at Annapolis on June 24, 1774. This was the beginning of the Provisional Government, which finally entirely superseded that of the Proprietary, declared Maryland independent, and framed a permanent Constitution for the new State. Into its history it is not our purpose to go. We treat of the end of the old, not of the beginning of the new.[1]

In addition to internal difficulties, Eden had an external one to contend with just before he left the province. This was with relation to the disputed boundary between Penn-

[1] See Silver's monograph in J. H. U. studies for 1895.

sylvania and Maryland. Within ten years Mason and Dixon had run their celebrated line between the two provinces; but the return of the boundary failed to meet the wishes of Harford's guardians, and they refused to sign it. On learning this, Governor John Penn wrote to Eden, stating that he proposed to issue an *ex parte* proclamation, establishing the boundary, and expressing the hope that Robert Eden, before leaving for England, would take measures to prevent the peace of the province from being disturbed.[1] Eden answered this letter on May 21, 1774, stating that he was on the eve of his departure, that Maryland would do nothing until authorized from England, and that it would be most improper for Eden to take any steps in the matter under the circumstances. He thinks "some disagreeable disturbances" may follow an *ex parte* proclamation, and desires Penn to forbear issuing it. He had already, in the previous January, told Penn that he could take no steps until he received permission from England. Influenced by this letter, Penn postponed his proclamation for a time,[2] but issued it finally on September 15. In so doing he was too hasty, for a letter[3] from Lord Dartmouth was already on its way to him, forbidding him to extend his jurisdiction over disputed territory. On receipt of this,[4] Penn suspended his proclamation for the time, but issued a new one on April 8, 1775, having received permission so to do.[5] When Eden had heard from Penn that the second proclamation was contemplated, he wrote him that he had received no notification that it had been permitted, and could not join in issuing it. A request made at this time by Eden for delay until news can be obtained from England, is answered rather contemptuously by Penn: "I rather wished than expected your concurrence in a proclamation,

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[1] Force's American Archives IV. 1; 738.
[2] Force's Archives IV. 1; 789.
[3] Dated August 26. Force's Archives IV. 1; 954.
[4] November 2, 1774.
[5] Force's Archives IV. 2; 130.

and my last letter was only meant to give you notice of my intention."[1]

Just before leaving the province, the land office caused further trouble, and Eden's opponents charged him with fraudulently granting to Thomas French, a creature of his, land near Fort Cumberland.[2] This charge was apparently based on a misapprehension of the facts in the case. The land west of Fort Cumberland had been reserved until a manor could be laid off for the Proprietary.[3] In February, 1774, French petitioned that the land be thrown open, and the next month, in Eden's absence, the board of revenue decided to grant[4] the prayer, as "the intent and design of the reserve had been fully answered." Eden approved the vote, but Jenifer, the Proprietary's agent, did not, and insisted that no patents should be issued for the land until the Proprietary's pleasure be known. The authorities in England took the part of Jenifer, and instructed the judges of the land office to suspend all further proceedings in the matter.[5] Not only French, but others, "persons of note, who from their situations, were probably apprised beforehand of the measure intended,"[6] had taken out warrants for the land, and Jenifer objected to this as "unjust in reference to the back inhabitants, 'who' stood the brunt of two Indian wars," but had not an equal chance with others for making advantageous locations.[7] Eden, personally, seems to have been free from blame, having done nothing but given formal approval to the findings of his officials.

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[1] Force's Archives IV. 2; 302, 303.

[2] Rowland's Mason II., 214.

[3] Kilty's Land Holder's Assistant, p. 264.

[4] Governor ill, but knew of it before meeting. Minutes of Board of Revenue, March 26, 1774.

[5] Jenifer says Rev. J. Boucher, T. Johnson and others were taking up lands west of Maryland, even west of the Alleghanies.

[6] Kilty's Land Holder's Assistant, p. 297.

[7] May 17, 1774. Board of Revenue. It had been intimated to Eden that persons had infringed on Proprietary reserves west of Fort Cumberland.

The minute book of the board of revenue gives much information as to these western land troubles. This board, composed of the great officers of the province, first met under Eden's presidency on June 19, 1769, and held its last meeting on January 11, 1775. Its control of revenue matters and power of appointment of minor officials who collected the taxes made it an important body. On April 29, 1774, the matter of western lands came before it again, and Jenifer told it: "You must be very sensible that the proprietor's noble predecessors have cautiously avoided giving any offence by granting lands to the westward of the line settled between the Crown and Lord Fairfax; for, although there cannot be a doubt but their fountain head of the South Branch was the spot intended, where the meridian line was to be set off as the west boundary of Maryland, yet I presume they waited for a favorable opportunity of bringing this matter before the King in Council." Such an opportunity he hoped the quarrel between the colonies of Pennsylvania and Virginia as to their boundaries would soon furnish.

In May, George Steuart, one of the judges of the land office, tells the board of revenue that warrants for unoccupied land must be issued if the caution money is paid, and further, that it is unreasonable for the officers to confine Baltimore to narrower bounds than does the charter. This would encourage the Virginians. He intimates that Eden is about to grant the western lands. At this Jenifer asks Steuart and Benedict Calvert, the other judge of the land office, to go with him to dissuade Eden, and states that he cannot see how delay in the grant of lands would prejudice Maryland or encourage Virginians. For himself, he fears encroachments on the Proprietary's lands. Steuart asks him for the names of any intruders, and promises to do justice upon them. The board again decided against Jenifer, and said, if caution money be paid, warrants must issue, and that Jenifer had not made his complaints sufficiently early. He should have told Eden before March who those citizens were who had borne

the brunt of two wars. Eden, from principles of benevolence, had directed the surveyor of Frederick County, which extended to the western boundary of the State, to inform those who had settled west of Fort Cumberland that on application and payment of caution money their lands shall be secured to them. The Proprietary's lands will be protected from encroachments. Indeed, the board say: "We apprehend that the expected emoluments from the proprietor's reservation will be entirely lost if the adjacent lands remain uncultivated; the mountainous situation of the country, and its distance from navigable water, preclude the hopes of an extensive commerce, and unless opportunity be offered to the tenants of interchanging their commodities with the neighboring inhabitants, we conceive but few persons, and those of the lowest estimation, would incline to settle in this solitary part of the province, shut out from the intercourse of mankind."

The decision of the English authorities, before referred to, and the outbreak of the Revolution, prevented further steps being taken under Eden's administration, and this interesting chapter in the history of the greed for western land remained unfinished.

CHAPTER X.

Rise of the Convention's Power.

After an absence of five months in England, whither he had gone to attend to the private affairs of himself and his wife and to his duties as executor of Lord Baltimore, Governor Eden arrived in Annapolis[1] on the morning of November 8, 1774. His absence had prevented him from see-

[1] His brother Thomas, in whose ship he came, told the Committee of Anne Arundel County that he had brought no tea with him, and would bring no goods for one who would send tea therewith, for which profession the Committee thanked him.

ing the patriotic Annapolitans burn the *Peggy Stewart*, because of her cargo of the obnoxious tea, and had, in a measure, separated him from the contending parties. Eddis tells us "his return to the province in this truly critical" time was "expected with an impatience which sufficiently evinces the sentiments of the public in his favor."[1]

In spite of the proclamation troubles there was no doubt as to the popularity of this man, who was so congenial to the Maryland aristocracy. On the day of his arrival he issued a proclamation notifying the various officers of his return and enjoining them to perform their respective duties.[2] So soothing was his influence upon the people that in the end of December he could write to Lord Dartmouth[3] that "the province has been tolerable quiet since I arrived," though "before that they had, in one or two instances, been second (I think) in violent measures to Boston." He was not blinded, however, by any seeming quiet, but continues: "The spirit of resistance against the tea act, or any mode of internal taxation, is as strong and universal here as ever. I firmly believe that they will undergo any hardships sooner than acknowledge a right in the British Parliament in that particular, and will persevere in their non-importation and non-exportation experiments in spite of every inconvenience that they must consequently be exposed to and the total ruin of their trade."

During that winter Eden was devoting his best energies to conciliating the colonists with such success that "a greater degree of moderation" was thought to "predominate" in Maryland than anywhere else.[4] But these efforts to preserve the public tranquillity were by no means wholly successful. The first convention of the freemen of Maryland had met in June, 1774, after Eden's departure for England. The second, sitting in November, passed resolutions for the

[1] Letters from America, p. 188.
[2] American Archives IV. 1; 972.
[3] American Archives IV. 1; 1075.
[4] Eddis, p. 200.

organization and drilling of the militia, the purchase of arms and ammunition and the carrying out of the non-importation policy. These measures, which were being carried out during the winter, did not tend towards tranquillity. Another cause for friction was the fact that, in commissioning magistrates for the several counties early in 1775, Eden left out the names of some previously commissioned, doubtless because they leaned too much to the popular side.[1] Complainers said that a junto in Baltimore had found means to attach themselves to men "who have the ear of our too-easy Governor," but it was Baltimore, too, that was the centre of the advanced patriots. Commercial Baltimore and the pioneers of Frederick county were the advanced wing of the patriotic party, while conservative strength was to be found in the aristocratic planters of Southern Maryland and the Eastern Shore.

The Convention met again in April, 1775, and, while it was sitting, came two alarms—one from the North, bringing news of Lexington and Concord; the other from the South, that Lord Dunmore had removed the powder and stores from the Virginia arsenal to the British fleet. On Thursday, April 28, as a result of this, a committee of six was appointed by the Convention to wait on Eden and ask that the provincial arms, powder and stores be delivered to them, lest some ship of war may arrive "whose commander might probably have instructions to seize the same."[2] The Governor consulted with his Council, and they agreed to surrender the arms, powder and stores to the colonels of the militia "under the ancient establishment" if they ask for them.[3] This was yielding to the clamor of the people and even to force, for the militia had been called out to seize the stores if necessary, but it was such a yielding that by it

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[1] American Archives IV. 2; 124.

[2] They told him they feared a servile revolt.

[3] Four colonels each made regular application for 100 stand of arms. Scharf's Maryland, II., p. 179. Eddis pp. 206–208.

"the dignity of government is maintained and the public tranquillity preserved."

Eden wrote to his brother[1] that, though in a state of thorough confusion and hourly expecting an uproar of some sort or other, his course seemed to be satisfactory to all, save possibly "some of our infernal Independents, who are in league with the Bostonians."

The Convention, before it adjourned, appointed a Council of Safety to sit in the interval between its sessions and act as an executive committee. Thus, says Dr. Browne, was a "perfect democratic government existing side by side with the phantom of Proprietary rule," and it speaks well for the tact of both governments that they continued to exist side by side for over a year.[2] The Convention further elected delegates to the second Continental Congress. Eden was unable to dissuade these delegates from going to Philadelphia, but he firmly believed they wished to bring about a reconciliation. He writes to Lord Dartmouth that the Convention acted with moderation, but that, owing to the disturbed state of affairs, he gives up the hope of returning to England at present to attend to his affairs there.[3] He felt that the "invariable attention to the interests of his royal master and the essential welfare of the province," with regard to which, Eddis tells us,[4] Eden conducted himself, demanded his presence in the colony, and so he remained.

The news of the battle of Bunker Hill increased the excitement; the drum and fife were everywhere heard, and all were expected to join the military companies, of which there were two in Annapolis and seven in Baltimore.

On July 18 the burning of the *Peggy Stewart* was recalled by a "second burnt-offering to liberty." Mr. Gildart, of Liverpool, had sent over one Captain Warren with the ship

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[1] April 28, 1775.

[2] Silver's account of the Provisional Goverment, in the J. H. U. Studies for 1895, is excellent.

[3] Dartmouth writes approving his conduct, July 5, 1775.

[4] Eddis, p. 214.

Totness, which carried goods contrary to the association, and was, therefore, plundered and burnt, after she had been run aground in the West River.[1] Eden endeavored in vain to find the offenders and punish them, though he had the satisfaction of knowing that the destruction was condemned by many even of the patriotic party.[2]

A third vessel was saved by Eden's efforts. The scow *Adventure*, commanded by Captain Heazell, brought to Annapolis about seventy intended servants. In the cargo were 200 dozen bottles of porter, several chaldrons of coals and some casks of cheese, which he alleged he intended to dispose of at Madeira. The local Committee of Observation thought this "proceeding a premeditated infringement of the association, and ordered him to return to England, servants and all." The "barbarity of such a measure" was, however, so strongly represented by Eden that the committee allowed the servants to be landed and the vessel to take water and provisions for the journey home. The captain was thought to delay too long in so doing, and the impetuous spirits could with difficulty be restrained from treating the *Adventure* as they had the *Peggy Stewart* and the *Totness*.

CHAPTER XI.

Attempts to Restrain the Provincials.

The clouds were all the time thickening. The convention met for the fourth time on July 26, and remained in session until August 14. It adopted the famous Association of the Freemen of Maryland. This document declared that the inhabitants of the colony are "firmly persuaded that it is necessary and justifiable to repel force by force," and "do unite and associate as one band and firmly and solemnly engage and pledge ourselves to each other and to America,

[1] Scharf's Maryland, II., 186.
[2] Eddis, p. 217.

that we will, to the utmost of our power, promote and support the present opposition carrying on, as well by arms as by the continental association, restraining our commerce." This document was signed by the members of the convention, and though it expressed a hope for "a reconciliation with Great Britain on constitutional principles," it was felt to be a great step towards breaking free from allegiance to the mother country.

Eden now felt that a stand should be made. The power of the Council of Safety was irksome to him. This union of the three departments of government in one body seemed to him to constitute "a real and oppressive tyranny in the very heart of the province." The proceedings of the convention were published on August 17, and on the 19th Eden called a meeting of the Council "to take advice how I ought to conduct myself and what steps I should take in opposition" to the Association. It had been resolved by the convention that all save the Governor's household must subscribe to the Association.[1] No regard was paid to the oaths of allegiance of the customs officers, the councillors, or other magistrates. The sole exception arose from the convention's kindly feeling toward Eden.

Only a few councillors appeared, and nothing was done until the following Monday. Then, at an adjourned meeting, where eight members beside Eden were present, he proposed issuing an address, the draft of which he had prepared. This address is a State paper of a kind far different from that which proceeded from British officials of the period. It is not dictatorial, but conciliatory; it is not an order, it is an appeal. Eden's sound common sense told him the futility of assuming a mandatory position. His first sentence ran thus: "To men warm in the pursuit of liberty, it is not easy to prescribe bounds, and he can be no friend of his kind who views not even the excesses of such with an indulgent eye." Hith-

[1] Eddis sent home his wife, and accepted Eden's invitation to become one of his household. Letters from America, 221.

erto, he continues, he has overlooked the "thousand instances of intemperate zeal that have occurred in Maryland, lest in thwarting the citizens he should but 'exasperate' them and because he relied on their 'natural good sense,' their love for England, 'our common parent,' and their veneration 'for the best King and the best Constitution' in the world." He had hoped that errors committed "under the noblest passion that can animate the human breast 'would not be ruinous,' nor be 'persevered in.'" Eden appealed to them to confirm his statement that, whilst he could think they sought "true, genuine, constitutional liberty," he was far from denying their claims, but rather pleaded in their behalf, and even represented in the most favorable point of view "proceedings which seemed to him 'far from justifiable.'" But now he must warn them that they "stand on the brink of a precipice." The Association pledged the Marylanders to "promote and support" "opposition by arms to the British troops." He feels that it is the last opportunity; that "there are already difficulties enough in the way of a reconciliation with the mother country," and beseeches them, "for God's sake not to increase them." "This is no place for me to say, authoritatively, what a conspiracy is, or what treasons and rebellions are; but I owe it to you to say thus much at least, that I would not for the world see the name of a man I esteem, in the list of subscribers to the Association."

The Council divided equally on the question of publishing this address to the people, and all asked Eden not to give the decisive vote, but to wait until the four absent councillors, hitherto kept away by wind and weather, should appear. The next day, however, those who had been in favor of issuing the address were seized with a "general timidity," and the address remained unpublished.

As Eden truly wrote to Lord Dartmouth: "It has ever been my endeavor, by the most soothing measures I could safely use, and yielding to the storm, when I could not resist it, to preserve some hold of the helm of government, that

I might steer, as long as should be possible, clear of those shoals which all here must, sooner or later, I fear, get shipwrecked upon." It was the consistent pursuance of this policy that enabled him to remain so long at his post.

He did not underestimate the danger nor the critical character of the time. Daniel of St. Thomas Jenifer, one of his own Council, had subscribed the Association and accepted a position on the Council of Safety, thinking that as "things have gone so far, people ought to risque everything," and that moderate men, such as he, might be able to prevent disorder and violence. This sort of thing made Eden fear that the authority he had "hitherto supported will cease to be of any great avail." He thought there were many in Maryland who would assert the rights of Great Britain and their own liberties if there were either troops or ships of war to support them. Without this support, they were being compelled to yield, "to muster and sign associations, etc., to preserve their lives and property without any further view, except perhaps learning the use of arms, so as to be on a level with those they are at present by force connected with and ready to desert from." Many others, "gentlemen of property, character and family, are leaving America," such as the Dulanys and Rev. Mr. Boucher. Eden had "suppressed some daring attempts at imminent hazard" of his life, as he writes in this long despatch to Lord Dartmouth. He had but little hope of stemming the tide successfully: "An assembly of rash people soon becomes a lawless and ungovernable mob, which grow desperate from necessity, arising from a total neglect of their peaceable trades and occupations, and kept constantly heated by the incendiary harangues of their demagogues, are a formidable enemy to encounter with words only, founded on reason, and arguments of moderation."

The despatch[1] from which the above quotations were made shows clearly Eden's character and situation, and is

[1] Letter printed in Schart's Maryland II., 1878, ff., with total misconception of its character.

further worthy of note from the fact that the answer to it was one of the intercepted letters, of which more anon. Eden felt he had revealed his thoughts so completely in this letter that he begged its contents be considered absolutely confidential.

Two days after this letter had been sent, on August 29,the Council of Safety, some of whose members at least had seen the proposed address, wrote to the Governor[1] to dissuade him from issuing a proclamation or even an address, less imperative than a proclamation, which they think would not be more conciliatory. They feel that "the defence of liberty requires extraordinary exertions," and "observe with pleasure that, though your excellency can't approve, yet your humanity inclines you to view them with indulgence."[2] With rare consideration from political antagonists, the new executive express to the old their appreciation of his "delicate situation," having duties both to England and to Maryland, and assure him "that independence of Great Britain is not the aim or wish of the people of this province." Eden was wise enough to yield to the entreaty of the Council of Safety. Even Eddis had feared that a decided disapprobation of the present proceedings "would effectually cancel his merits, subject him to calumny and censure, and render his longer continuance in Maryland impossible."[3]

The latter part of 1775 saw no very stirring events occurring on the soil of Maryland. The few remnants of authority were taken gradually from the provincial government. Rumors of the arrival of men-of-war disturbed the people from time to time. At one such rumor during that autumn there was held a public meeting in Annapolis, and an address was presented by it to the Governor, stating that "if a vessel belonging to His Majesty should be stationed in our

[1] Maryland Archives I., p. 72. The Archives are published in several series. All the references in this work are to the Revolutionary Series.

[2] Maryland Archives I., p. 73.

[3] Letters from America, 223.

harbor," they would supply the same with every necessary, at a reasonable price, and cautiously "would avoid any cause of contention with the officers or the crew."[1]

The Council of the Governor met more seldom than formerly, and, when in session,[2] discussed whether they ought to receive Continental currency, and how to secure men to take the high and responsible office of sheriff, a position members of the patriotic party were disinclined to keep in these times of contention. There was some little personal difficulty also about the collection of the Governor's salary, due to the delay in the settlement of Lord Baltimore's estate.

For the rest, things went on rather quietly. The Governor was chagrined to have his letters detained for inspection before they were given him;[3] he watched with interest the growing fame of that Virginia colonel with whom he had been on such friendly relations;[4] he was disturbed a trifle by the theft of an old and mended seine from the bottom of his garden,[5] or was more gravely put out by the miscreant who broke open his stables and let out his gray stallion.[6] The old friendship and correspondence with Maryland friends, such as Rev. John Montgomery, of Georgetown, and George Fitzhugh, of Rousby Hall, was kept up. The Governor spent part of the Christmas season of 1775 with the latter, and enjoyed almost the last quiet days of his official life.[7] The old gayety of Annapolis and the province had departed, however, and all men spoke of the war.[8] The quiet in Maryland contrasted most favorably with the turmoil in Virginia, and the difference was largely due to the different procedure of Dunmore and Eden. The latter, as

[1] Letters from America, 238.
[2] American Archives IV. 3; 1570.
[3] Letters from America, 240.
[4] Letters from America, 236.
[5] *Maryland Gazette*, Oct. 25, 1775.
[6] *Maryland Gazette*, Jan. 11, 1776.
[7] Maryland Archives I., 505, 519.
[8] Letters from America, 241.

late as January 16, 1776, still "continued to receive every mark of attention and respect," as Eddis tells us, "while the steady propriety of his conduct in many trying exigencies reflects the utmost credit on his moderation and understanding."[1]

He was in perfect health, and indefatigable in the endeavor even yet to bring about a reconciliation. The Maryland convention had so far defied England as to stop the passage of the mail through the province,[2] yet Eden wrote home on January 25 that he is "convinced the people of Maryland are far from desiring an independency, but would consider it a most happy event to be in precisely the same relation to the parent State as at the conclusion of the last war."

This letter was probably the result of a conference between Eden and some of the prominent members of the provincial convention. On January 15, Jenifer wrote from Stepney to Charles Carroll, barrister, that Governor Eden was visiting him, and was "very desirous and willing to co-operate with you and Mr. (Matthew) Tilghman and such other gentlemen of the convention as are willing to disperse the cloud that has almost overshadowed and is ready to burst upon us."[3] With this object in view, he invites Carroll, Tilghman, Thomas Johnson, James Holliday and Thomas Stone to dine with him at some convenient day.

Carroll answers at once that if the gentlemen come they fear they will not be able to return to the convention in time, and requests Jenifer and the Governor to dine with the same company at his house on Friday, even though, as a good Roman Catholic, Carroll could not then give them meat.[3] The dinner came off,[4] and a free conversation was engaged

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[1] Letters from America, 257.

[2] *Baltimore American*, Dec. 11, 1775, No. 104, p. 415.

[3] American Archives IV. 4; 680.

[4] A story is told in the *Baltimore Chronicle* for 1833, which seems to refer to this dinner. According to it, at the dinner, Eden said: "It is understood in England that the Congress are about forming a treaty of alliance with France." To this Johnson answered: "Gov-

in, as a result of which Eden wrote the letter last referred to, and enclosed the instructions to the Maryland delegates in Congress, as containing the true sentiments of the people."[1]

These instructions[2] had been passed on the 12th instant, and were the first ever given to the delegates. They were extremely moderate in tone, refer to the "mildness and equity of the English Constitution, under which we have grown up and enjoyed a state of felicity not exceeded by any people we know of," and express a wish for "a reconciliation with the mother country, upon terms that may ensure to these colonies an equal and permanent freedom." The delegates were "to secure the colonies against the exercise of the right assumed by Parliament to tax them and to alter their constitutions and internal polity" without their consent. They were prohibited from assenting to a declaration of independence, an alliance with a foreign power, or any confederation which would necessarily lead to separation, unless in their judgment it should be absolutely necessary to preserve the liberty of the United Colonies. If any of these measures be passed by Congress without their assent, they must submit them immediately to the convention.

Eden's letter to the home authorities, and several private ones which he assured the Council, on his honor, contained

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ernor, we will answer your question, provided you will answer one for us." To this Eden agreed and then Johnson said, "Well sir, we will candidly acknowledge that overtures have been made to France, but that they are not yet accepted. Now, sir, we understand that the king, your master, is about subsidizing a large body of Hessians to join his forces to come over to cut our throats." Eden responded that he believed that to be the truth, when Johnson rejoined: "The Hessian soldier that puts his foot on the American shore will absolve me from the allegiance to Great Britain;" while Chase exclaimed, "By God, I am for declaring ourselves independent." "The Governor immediately dropped his knife and fork and did not eat another mouthful." I attach little credence to the story.

[1] Scharf's Maryland II., 218.

[2] March 5, 1776. Gen. Charles Lee writing from Williamsburg speaks of these resolutions in most bitter terms. Memoirs, p. 381.

nothing unfriendly to America, were forwarded to the Maryland Deputies in Philadelphia, with a letter from the Council of Safety itself, expressing the belief that this step "cannot be productive of an ill-effect; it may be of great service. It may possibly bring about some overture to a general reconciliation." The Council further urge the Maryland Deputies to see that the letters are not opened, but rather forwarded at once.[1]

The convention met December 7, 1775, and adjourned January 18, 1776.[2] Besides trying this last measure of reconciliation, they made full preparations for the continuance of the war. The military forces of the State were thoroughly organized, provision was made for a gunlock manufactory, committees were appointed for raising, clothing and victualling the forces.

The General Assembly of the province had been continually prorogued by the Governor since April, 1774, and now he and the Council of Safety stood alone in the colony, face to face with each other. The other provinces could not understand Maryland's delay. The confidence reposed in the Committee of Safety, the popularity of the Governor, the conservative character of the Maryland men perplexed and disturbed the radicals of Virginia and Massachusetts. Because they were not so impetuous, and more inclined to wait until their footing was sure, many outside of the province were inclined to think them halting and lukewarm in the patriotic cause. Month after month passed, and nothing seemed to be done. There was special reason why Maryland should be attached to the past. The Proprietary Government, in the careful words of McMahon,[3] "in the protec-

[1] Maryland Archives I., 108. Sparks's Life of Lee in Lee Papers IV., 276, says the "influence of Eden was visible in these transactions," and refers to even the effect upon the foremost patriots of Eden's "conciliating manners and private character."

[2] New Council of Safety chosen on January 17; Governor's household still to be free from association, January 16.

[3] McMahon History of Maryland, p. 425.

tion of public liberty and private rights, and in all the securities which these derive from self-government, gave peculiar freedom and privilege to the subject," and "was generally so administered as to promote the interests and secure the attachment of the colony. That attachment was of the purest character. It was cherished for their free institutions, and not for the personal interests of those who administered them." But the personal character of the Governor also had much to do with keeping their attachment to those institutions warm.

CHAPTER XII.

The Coming of the "Otter."

Little of importance now occurred until the beginning of March. The government had passed completely into the hands of the Council of Safety, and Eden was little more than a hostage, possessing only the simulacrum of his former authority. Nothing could have shown this more clearly than the arrival of the *Otter*. This event also showed the confidence still reposed by the colonists in their Governor and their readiness to resist attack. Maryland had hitherto enjoyed an absolute immunity from hostile visits of the fleet, a favor to which the favorable representations Eden made of the temper of her people no doubt largely contributed.

Now, however, about 7 o'clock on the evening of the 5th of March came news by the pilot boats to Annapolis that a ship of war and two tenders were under sail on their way up the bay. The night was extremely dark and tempestuous, the rain falling in torrents, but, in spite of that, many persons in Annapolis began to remove their goods at once and prepare for flight.[1] In their terror it was entirely forgotten that

[1] *Baltimore American*, No. 117, March 13, 1776. Marvland Archives I., pp. 201–241. Letters from America, pp. 258, ff. *Maryland Gazette*, March 14, 1776.

an attack on the city was extremely improbable while "a Governor under the authority of Great Britain was a resident in the town," and had transmitted no complaint "relative to the treatment experienced by him."[1] The Council of Safety met at once and sent expresses to the Baltimore Committee and to the militia colonels of the vicinity.[2] Arms were sent for from Frederick county, and the Continental Congress was asked for powder.

Eden was equally prompt. He "resolved to pursue every eligible method that might effectually remove the apprehensions so universally entertained," and, therefore, made immediate application to the Council of Safety that a flag of truce be sent on board the ship as soon as she appeared.[3] This was determined upon, and on the 7th of March Eddis was sent by the Council with the flag on board the ship, which proved to be the *Otter*, Captain Squires, with eighteen guns. She had with her two tenders, one of six carriage guns, the other armed with four swivels only. On her way up the bay[4] she had taken a New England schooner laden with flour in the Patuxent, and had burnt a shallop laden with oats off the mouth of the Severn. The high wind prevailing on the 6th had prevented the vessel proceeding up the bay,[5] but, on the 7th, she pushed northward and anchored off the mouth of the Patapsco, where Eddis came on board. The tenders pressed on and took a ship laden with wheat and flour, which had run aground in the Patapsco.

By this time the people had somewhat recovered from their terror and had surmised the true purposes of the *Otter's* visit—to obtain fresh provisions and to capture the privateer *Defence*, Captain James Nicholson, which was fitting out in Baltimore.

Eddis bore with him to the *Otter* a letter from Eden, and

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[1] Maryland Archives I., p. 529.
[2] Maryland Archives I., p. 203.
[3] Maryland Archives I., p. 260.
[4] Maryland Archives I., p. 219.
[5] Maryland Archives I., p. 217.

took pains to assure Captain Squires of the moderation of the Marylanders, their aversion to independence and their respectful treatment of the Governor. Captain Squires met these overtures affably,[1] assured Ellis that he intended no harm to Annapolis, nor any other town, that he would pay market price for the fresh provisions, in search of which he had come, and that he had given orders to his men not to fire unless attacked, nor to commit any depredations.[2] A letter embodying these same sentiments was sent by him to Governor Eden[3] when Eddis returned on the next day. Captain Squires apologized for the burning of the vessel off the mouth of the Severn, and said it was done without order and by an inconsiderate midshipman.

Meantime, the *Defence* came forth from Baltimore harbor, "manned with a parcel of buckskin heroes and other brave fellows" and accompanied with several small vessels to assist her "in case of an engagement, which would have been dreadful," as "Nicholson intended to grapple at once."[4] There were many who were sanguine enough to hope that the *Defence* might even be able to take the British ship, but the combat did not take place. The Baltimore prize, which was left in the charge of the tenders, was retaken by the *Defence*, and the latter vessels might have been forced to surrender to the privateer had not the *Otter* come to their assistance. Captain Squires, seeing the *Defence* was fully prepared for battle and could not be taken by surprise, did not wish to try the consequences of a battle,[5] but dropped down the bay to Annapolis, while the *Defence*, after picking up some small craft which the British had taken, returned to Baltimore. On the afternoon of Saturday, March 9, the *Otter* came to anchor off Annapolis and sent ashore two officers

[1] Maryland Archives I., p. 263.
[2] Maryland Archives I., p. 264.
[3] Given in full in Purviance's Baltimore in the Revolution, p. 184.
[4] Maryland Archives I., p. 227, 268.
[5] Maryland Archives I., p. 237.

under a flag of truce.[1] These bore a letter to the Governor and had conference with Jenifer, president of the Council, and Tilghman. They "behaved very politely and on some subjects were free and communicative."[2] The seamen who accompanied the officers continued in their boat at a small distance from the shore, where "they supported a friendly conversation with the provincial military, who were stationed on the beach to preserve regularity."

Captain Squires, in his letter to Eden, desired provisions and permission for one of his tenders to take unmolested a New England sloop lying in the Severn laden with bread and flour. Eden laid this letter before the Council, and was informed by them[3] that, in time gone by, they would have been glad to furnish any of His Majesty's ships with provisions, but, after Captain Squires' conduct, especially in suffering the vessel to be burnt in the mouth of the Severn, they cannot do so. The request to be allowed to take the New England vessel unmolested the Council took as an insult, and rendered no further answer to it than by putting a guard of fifty men on board of her.[4]

In their communication to Eden of their refusal to furnish provisions to Squires the Council are careful to show their appreciation of the Governor's efforts to prevent a conflict, and say, "We are much obliged to your Excellency for the Pains you have taken to preserve the Peace of this Province, and beg that you will still exert your Endeavours for the Restoration of those happy days that we enjoyed under a Constitutional Dependence on the Mother Country."[5]

Encouraged by this mark of confidence, Governor Eden made a final and successful effort to have the incident end pleasantly. His answer to Squires was such that on the next morning, it being Sunday, a flag of truce was sent

[1] Maryland Archives I., 226.
[2] Maryland Archives I., p. 237.
[3] Maryland Archives I., p. 233.
[4] Maryland Archives I., p. 237.
[5] Maryland Archives I., p. 233.

ashore with some prisoners, "who said they had been treated with great humanity." This fact secured the *Otter* what she desired, for "in return, it was thought proper to compliment the officer with two quarters of beef."[1] That afternoon the *Otter* sailed down the bay. It was almost Eden's last service to his province. His few remaining weeks were largely occupied in preserving his own safety, and in preparing for his departure from Maryland.

CHAPTER XIII.

The Intercepted Letters.

The rest of the month of March passed without exciting events; but, with the coming in of April, the whole province was stirred, on account of the interception of certain letters written to Governor Eden. Sir George Germain had succeeded Lord Dartmouth in the colonial office, and on him devolved answering Eden's important dispatch of the 27th of August. Germain had wonderful capacity for blundering, and, forgetting the caution that Eden had given as to the danger of letters being opened before reaching their destination, he used in his reply such expressions as these: "Your letter contains a great deal of very useful information, and your confidential communication of the characters of individuals, more especially of such as come over into England, is of great advantage." He assures him that the King is much pleased with his conduct of the government, and that his letter will be kept a profound secret. Then, as if the foregoing was not enough to rouse the suspicions of every son of liberty, he adds, what was sure to turn those suspicions into a firm belief that Eden had been writing in a most unfriendly way to those at home. "An armament, consisting of seven regiments and a fleet of frigates and small ships, is now in readiness to proceed to the Southern

[1] Maryland Archives I., p. 242.

Colonies, in order to attempt the restoration of legal government in that part of America." This armament is bound for North Carolina, or Virginia, and, if it goes to the latter colony, "it may have very important consequences to the colony under your government, and, therefore, you will do well to consider of every means by which you may, in conjunction with Lord Dunmore, give facility and assistance to its operations."[1]

A more injudicious letter than the above can scarcely be imagined. It was sure to lead heated partisans to the conclusion that the leading men of the colony were marked out by Eden for condign punishment, in case of success of the British; that he was about to aid the hated Lord Dunmore, and that the armament, doubtless sent for by Eden, would overthrow Maryland's liberty. It was little wonder that Thomas Stone, a moderate man, wrote thus to Jenifer, of Germain's letter: "Independent of everything else, it is very suspicious; but, taking Mr. Eden's conduct and the letter from his brother (who must know his sentiments) into consideration, I think greatly lessens the charge," which would be made had they Germain's letter alone.[2]

The letters from Eden's brother, William, referred to above, came in the same packet as the one from Germain. They were two in number, and were written[3] on November 15 and December 24, 1775. The earlier one of these private letters speaks of Eden as "a moderate man," and one who wishes "well and kindly to both parties, at the same time that you dislike the extremes of the language and conduct pursued by both;" but the later one shows more clearly how Eden's position was regarded by his own family. In it William Eden used the word "you" repeatedly to include both the colonists and his brother, and speaks of the inter-

[1] Letter dated December 22, 1775. Printed in Maryland Archives I., p. 344.

[2] Letter of April 24, 1776. American Archives IV. 4; 1047. Maryland Archives I., p. 383.

[3] Maryland Archives I., p. 343 to 346.

ests of both as identical. If it be said this is not of great importance, it may at once be answered that this could have been written of no other royal Governor in America for years before this date. William Eden uses such phrases as these: "You who have rather a predilection for America;" "you will neither hear reason or act reasonably." To his brother's conduct in his difficult position William Eden gives unqualified praise,[1] and says, "you are acting the dignified, determined part, and are showing yourself a Friend to both sides of the Atlantic. You have all due Honour for it here, and I hope you will be treated with equal Candour on your own Side of the Atlantic." The packet of letters also contained two more; a second one from Germain,[2] enclosing a copy of the offer to pardon all who should cease resistance, and conveying the information that a commission would shortly be sent to America; and one from Lord Dartmouth, which was written as far back as July 5, 1775, and praised Eden's conduct in his government and his determination not to leave Maryland to attend to his family affairs in England until the storm were over. This letter also orders Eden to render all help possible to the British forces, and expresses satisfaction with what Eden has written of the moderate counsels prevailing in Maryland.[3]

These letters, whose contents we have been so particular in describing, because of their important consequences, being forwarded duly across the Atlantic, came into possession of some one in Lord Dunmore's armament, and were there held until there should come a favorable opportunity of forwarding them to Eden.

The opportunity came at last. Mr. Alexander Ross came to the Council of Safety about the first of March, bringing a letter of introduction from two members of the Continental

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[1] Maryland Archives I., p. 346.

[2] Dated December 23, 1775. Maryland Archives I., p. 345.

[3] Maryland Archives I., pp. 341, ff., American Archives IV., 4, 961.

Congress.[1] He desired a passport to Lord Dunmore, that he might transact some private business with him; but the cautious Council of Safety merely gave him a passport and letter of recommendation to Virginia Council of Safety.[2] Ross failed to get from them a passport, but went to Dunmore without one, and on his return took with him the packet of letters addressed to Governor Eden.[3] He started out with a small vessel, and was overtaken and captured by Capt. James Barron. The papers were taken from him and sent to Williamsburg, though he himself was suffered to go free. At Williamsburg the letters were given to Governor Charles Lee, who was stationed there in charge of the Southern Department.[4] Lee was then playing the role of the pronounced patriot, and was prompt to seize this opportunity of showing devotion to the patriotic cause. He at once consulted with the Virginia Council of Safety, in session at Williamsburg, and on April 6 they decided the proper course to pursue was to send copies of the letters to the Continental Congress and the Baltimore County Committee of Observation. Lee had stopped in Baltimore on his way South, and had had a long talk with Purviance, chairman of the local committee. The latter, who had just been successful in planning the measures taken by the *Defence* to repulse the *Otter*, was somewhat inclined to depreciate the vigor and energy of the Council of Safety.[5] He represented to Lee that the Council was "timorous and inactive," and both Council and Convention were "afraid to execute the Duties of their Stations." As a result, the Virginia Council omitted to send the Maryland Council these letters, "which

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[1] Maryland Archives I, p. 185.

[2] Maryland Archives I, p. 207.

[3] Maryland Archives I, p. 340. See Eddis, p. 279, ff.

[4] Purviance, p. 50. See Sparks's Life of Lee, American Biography vol. XVIII, and Lee Papers IV, p. 276. The letters, as revealing the ministerial plan of campaign, were of great help to the Virginians in preparing to resist the British.

[5] Maryland Archives, p. 347.

open the Schemes of Administration to us in a more explicit Manner than any other Intelligence we have been able to procure;" but sent them to Baltimore, requesting that they be forwarded to Philadelphia.[1]

With the Virginia letter to the committee, came a private one from Lee to Purviance.[2] It is written in theatrical style, and states that he knows not "to whom I can address this most important note with so much propriety and assurance of success as to yourself. The crisis will not admit of ceremony and procrastination. I shall, therefore, irregularly, address you in the language and with the spirit of one bold, determined, free citizen to another, and conjure you, as you value the liberties and rights of the community of which you are a member, not to lose a moment, and in my name (if my name is of consequence enough) to direct the commanding officer of your troops at Annapolis immediately to seize the person of Governor Eden. The sin and blame be on my head. I will answer for all to the Congress."[3]

These letters arrived in Baltimore[4] on Sunday, April 14, and a meeting was immediately summoned to consider them. The committee determined,[5] without dissent, to send them to Congress at once, under care of Lieutenant David Plunket, and to send other copies on the morrow to the Council of Safety. Feeling the packet of too much importance to be intrusted to a common express, they resolve that three of their number take it to Annapolis, and there, joining with themselves a fourth member then in Annapolis, present it to the Council.[6] With the packet for Congress went an un-

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[1] Maryland Archives I, p. 359. American Archives IV, 5, pp. 929 and 1517.

[2] Maryland Archives I, p. 315; Lee Papers I, p. 381; Purviance, p. 50.

[3] Maryland Archives I, 410. Lee states this letter was read to Virginia's Committee of Safety and approved by them.

[4] Maryland Archives I, p. 358.

[5] Purviance, p. 191. Maryland Archives I, p. 359.

[6] Maryland Archives I, p. 360.

signed letter from Purviance to John Hancock, containing a copy of Lee's letter to the former.[1] In this the supposed timidity of the Council was detailed,[2] and Purviance represented "himself as an object against whom the intentions of the Council of Safety are levelled," and, as evidence of this, he stated that one of the members of that body said he was "a warm man or a hot-headed man, whose power must be pulled down,or he would throw things into confusion."[3] The packet to Congress was sent off at 4 A. M., Monday morning, that to Annapolis was brought more leisurely, and reached there about 3 P. M. on Monday.[4] The Council did nothing that evening, such was their confidence in the Governor; but the next morning, the 16th of April, they appointed Messrs. Charles Carroll, Barrister, and John Hall, members of their body, to wait on Eden, and asked Wm. Paca, who was in the city, to go with them.[5] This delegation was directed to ask the Governor for his letter to Lord Dartmouth, in answer to which Germain wrote the intercepted letter, and, if they failed to receive that, to ask his parole that he will not leave Maryland before the convention meets on May 27.

The delegation waited on the Governor, and were told by him that he sent away the copy of that letter, with all his important papers, during the preceding fall; that they might be convinced there was nothing in it unfriendly to the province, since otherwise troops would have been ordered there; "that he had not endeavoured to enflame the Ministry, by traducing the Characters of Individuals, some he had spoke well of, others he had recommended as Sufferers. The Gentlemen of the Congress he had spoken of acting in the Line of Moderation." The synopsis of the letter itself, which has

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[1] Purviance, p. 195. Maryland Archives I, p. 377.
[2] Maryland Archives I, p. 347.
[3] Maryland Archives I, p. 380.
[4] Maryland Archives I, p. 354.
[5] Maryland Archives I, pp. 333, 340.

been already given, shows us that the Governor spoke the exact truth to the delegation.

When they asked for his parole,[1] he complained of being unjustly suspected, and asked to have until noon of the next day, Wednesday, before giving a definite answer.

Before that answer came, several things of importance had occurred. Lieutenant Plunkett and his packet of letters had arrived in Philadelphia on the morning of Tuesday, April 16, just before Congress met.[2] After the minutes of the preceding day had been read, Hancock began to read Purviance's letter to him, and soon saw from its tone that it was not intended for Congress. He then stopped reading it, but being desired to go on, did so, reading it through. Although the name of the writer was not known, the Maryland delegates at once conjectured it to be Purviance, and even claimed they recognized the handwriting.

As soon as the reading was finished, Thomas Johnson moved to send the original, or a copy of it, to the Maryland Council.[3] This was warmly debated, but finally postponed until the following day, that the subject of the other letters might be discussed. After discussion it was resolved that there was great reason to believe that Eden has carried on a correspondence,[4] "highly dangerous to the liberties of America," and that the Council of Safety of Maryland be earnestly requested, immediately, to seize the person and papers of Governor Eden and "such of the papers as relate to the American dispute, without delay, to be conveyed safely to Congress." They also request the Council to seize Alexander Ross, and send his papers to Congress. These resolutions were sent[5] under cover of a letter from Hancock, and were received in Annapolis by the Council on Thursday, April 18.[6]

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[1] Maryland Archives I, pp. 334, 340.
[2] Maryland Archives I, p. 347. Purviance, p. 195.
[3] Maryland Archives I, p. 348.
[4] Maryland Archives I, p. 335.
[5] Maryland Archives I, p. 334.
[6] Maryland Archives I, p. 349.

After the resolves had been passed, the Maryland delegates moved that the letter sent by Purviance to Hancock be immediately transmitted to the Maryland Council, that they "might have an opportunity of vindicating your Honour against the malitious charges."[1] A warm debate followed, lasting several hours. The Maryland men insisted that "the letter, containing the most severe reflections" on their Council, ought not to be concealed; that it was absolutely necessary "that the dignity of the executives of every province should be supported if properly conducted," and that if there was any suspicion resting on any public body, it should be made known to its constituents, that it might be replaced by another. Already the writer of that letter had caused Virginia to be suspicious of Maryland, and Maryland's representatives insisted that justice be done to the "injured characters" of the Council.

The opposers said the letter was confidential, that there was no suspicion raised in Congress by it, and that the mischief produced by publishing the letter would be greater than any good that could result from it.

When the vote was taken it was found that three colonies voted to request the President to lay the letter before Congress, while five voted against it, and the vote of one was divided. The motion was lost, and the Maryland delegates wrote to the Council that they felt "this treatment to you and our province to be cruel and ungenerous to the last degree." The next morning, April 18, the delegates waited on Hancock to ask for the letters, "but he refused to see us."[2]

Let us now turn to Baltimore and take up the course of events there from Sunday night. At the meeting of the committee of observation that night at Purviance's house,[3]

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[1] Maryland Archives I, p. 351. Lee Papers II, 141.
[2] American Archives IV, 4, 968. Maryland Archives I, p. 352.
[3] Maryland Archives I, p. 363.

it seemed to be the general opinion that, if Captain Nicholson's tender were there, "it would be proper to dispatch her with some men to Annapolis to wait the orders of the Council."

On Monday morning[1] the news came that Capt. Jas. Nicholson had returned from Chestertown. Purviance sent for him at once, told him the purport of the dispatches received the day previous, and what use for his boat had been thought of on the previous night. Purviance observed that, if the Governor, whose character he thoroughly misunderstood, had escaped from Annapolis, the tender "would be the properest vessel to pursue after him, as she could both row and sail."[2] Nicholson agreed as to the propriety of the measure, and consented to get his boat ready and to send her in charge of one of his officers. Purviance saw Major Mordecai Gist and obtained his consent to send Captain Smith with a detail of men in the tender, and next went in search of Capt. Samuel Smith, afterwards prominent in national politics.[3] He was found exercising the three companies stationed in Baltimore, and was told by Purviance "that an affair of the greatest consequence demanded my attendance; that there would be occasion for eight or ten of my men under my command to go in Captain Nicholson's tender."[4] Smith, therefore, shortly dismissed the troops, selecting ten good men and a sergeant, and ordering them to be in readiness at half-past one. He then went to Purviance's, expecting to find the committee, but saw no one save its chairman, who for the nonce had assumed full executive power. Smith was then shown the letters, and, agreeing as to the need for haste, went in search of his commanding officer, Major Gist, whom he did not find.

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[1] Maryland Archives I, p. 370.

[2] Maryland Archives I, p. 364.

[3] Smith wrote an account of this on Dec. 31, 1821, and sent it to T. W. Griffith. There are no new facts in it. The MS. is in the Maryland Historical Society Library. Maryland Archives I, p. 364.

[4] Maryland Archives I, p. 390.

Purviance, meantime, according to his story, saw most of the gentlemen[1] who had been at the meeting the night before and obtained their approval of such use of the tender. About dinner time, Captain Smith met him and told him that he awaited orders. Of these Purviance says he had not before thought. "The committee was then broke up for dinner." So "without the Concurrence or Advice of any Person," Purviance very hastily wrote out orders, which he delivered to Major Gist, signing them as chairman of the committee.

These instructions[2] were: First, to proceed in the tender to Annapolis with as many armed men as should be necessary. Should the Governor's boat be met on the way, "by all means" they must try to board her, and, in case Governor Eden, Secretary Smith or Alexander Ross be on board, they are to be seized, with all their papers, and instantly brought "under the strictest guard," not to the Council of Safety at Annapolis, but to Baltimore. In case the boat be not seen on the way, on arriving at Annapolis the tender is to lie at a distance and the men are not to be allowed to appear in numbers on deck, lest alarm be given. Captain Smith is to go ashore and deliver a letter given him for the Baltimore deputation, which went over that morning, and follow their directions thereafter. Blunderbusses and any necessary quantity of arms are to be taken, and the officer in command of the vessel is to be consulted with in everything. The men are to know nothing of the purpose of the expedition, "at least until it comes to the execution."[3]

These instructions were endorsed by Major Gist, and given by him to Captain Smith at Purviance's house.[4] The letter sent to the Baltimore deputation by Purviance is a brief statement of the facts in the case, and suggests that if

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[1] Maryland Archives I, p. 364.
[2] Maryland Archives I, p. 374.
[3] American Archives IV, 4; p. 930; Maryland Archives I, p. 388.
[4] Maryland Archives I, p. 391.

Eden have escaped, he may yet be overtaken at Colonel Fitzhugh's, where he will probably stop. It states that the expedition is to be at their and the Council's command, and can return instantly in case there is no occasion for its services.[1]

Captain Nicholson also wrote instructions[2] to Lieut. John Nicholson, whom he placed in charge of the tender. After landing Captain Smith, he is to stand off and on in the harbor and examine every boat, in search of the Governor and his secretary. If found and made prisoners, they are to be delivered to the Council, if Captain Smith has orders to that effect; if not, they are to be brought on board the *Defence*. If they have escaped, he is to go to Colonel Fitzhugh's and assist Captain Smith in examining the house, if necessary. If Eden be not found there, Nicholson is to stand as far down the bay as seems prudent.

It will be observed that there is very little consideration paid to the Council of Safety in these instructions.[3] They were especially indignant at this, and most of all, at the direction to take the Governor to Baltimore. Purviance tried to explain this at a later day by saying that he "conceived that, at the seat of government," Eden "would have numerous friends and partizans, a clamour might be raised and a rescue attempted."

The vessel set sail with these instructions, and came to anchor off Annapolis[4] about 3 o'clock Tuesday morning, April 16. At daybreak Captain Smith went ashore, and found the Baltimore deputation, to which he was accredited. They told him the Council had enjoined the utmost secrecy upon them, and advised him not to show his orders to anyone else, "as it was their opinion they were in some degree improper." After breakfast they waited on Jenifer, and on

[1] Maryland Archives I, p. 382.

[2] Maryland Archives I, p. 382. Purviance swore he did not see these until after the tender's return. Maryland Archives I, p. 380.

[3] Maryland Archives I, p. 379.

[4] Maryland Archives I, p. 390.

their return to the coffee house they told Smith that Jenifer approved of the coming of the vessel, and that at 10 A. M. they would meet the Council, who would give Smith further orders. About noon he was told that they desired him to remain with the boat, and about sunset he went on board again[1] and found that only one boat had attempted to leave the harbor, and she had been stopped. On Wednesday morning this boat put off again, and was stopped again; about noon the Governor's boat, getting under way, was brought to,[2] and, with a perspicacity equal to that of Sergeant Buzfuz, the Governor was thought to be preparing for an escape, because some bottles of porter and claret were found on board. Smith put a guard on the boat, and was sorry to find that they drank two bottles of porter and one of claret. Shortly afterwards the owner of the other boat which was stopped came to the tender to ask the cause for stopping his vessel. Captain Smith went ashore with him, and, meeting there Charles Carroll, Barrister, Secretary Smith and Lieutenant Nicholson, the owner of the boat, complained of his treatment to them, and was assured the Council had given no order for such conduct on the part of the tender. Smith then was given a note to his committee and told, verbally, that the affair was settled, and that he might return to Baltimore.[3] He accordingly weighed anchor about 2 o'clock, having given the instructions to Mr. Carroll. The boat reached Baltimore, and reported to the Committee of Observation that very evening.[4]

The affair was settled. At noon on Wednesday, April 17, the time he had promised[5] Eden had sent a letter to Messrs. Carroll, Hall and Paca. This dignified and manly docu-

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[1] Maryland Archives I, p. 391.

[2] Eden said three persons in it were nearly drowned. American Archives IV, 4; 731.

[3] Maryland Archives I, p. 361. American Archives IV, 4; p. 392., 731, ff.

[4] Maryland Archives I, p. 360.

[5] Maryland Archives I, p. 337.

ment had fully satisfied every desire of the Council. He acknowledged their "polite behaviour" in their unwelcome errand, but refused, on "mature consideration," whilst acting "in any degree as Governor of this Province, to give my Parole to walk about in it as a Prisoner at Large." He stated that he must cease to be Governor, if he became a prisoner. However, he tells them willingly that: "I had and have no Intention, during these Times, of leaving the Province, whilst my continuing here can in my own Opinion, tend to preserve its tranquility." This resolution is not altered by the "indignity" now offered him; but "I shall persevere in my line of Duty, by what I think the Rule of Right," though he is somewhat chagrined at finding himself suspected unmeritedly. He challenges the Council to show any measures hostile to Maryland arising from his requests or information sent by him to England. Nay, he is willing to go further; not only does he intend to continue in his station "as long as permitted, or the ostensible Form of the established Government can contribute to preserve the Peace of the Province," but he goes on to state "that, as your Convention is to meet shortly, they shall find me here and willing to continue acting in the same Line I have hitherto done, so long as Maryland can reap any peaceful Benefits from my Service."[1]

He makes only one proviso to the above statement, and that is that he have assurances that his "peaceful departure shall not be impeded, whenever I find my remaining here unnecessary, or that my private affairs at home indispensably demand my Return."

The manly frankness of the letter appeals to us, as they then did to the Council,[2] and we feel they can give none but an affirmative answer to such an open statement of the

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[1] Maryland Archives I, p. 338. American Archives IV, 4, 963.

[2] Eddis (p. 280) writes, "the Council of Safety acted on this occasion (*i. e.*, the intercepted letters) with the utmost moderation and delicacy."

Governor's position. There was, however, the possibility that they might not do so, and, therefore, Eden closes his letter with a solemn word of warning: "Consistent with my honor and my insulted station, I cannot add more but that, if made a Prisoner, I shall consider myself treated as an Enemy, and such a Proceeding as a Breach of that Confidence I have implicitly imposed in you, which I thought my conduct and the public Declaration of the Convention justified." The Council immediately ordered an answer to be draughted.[1] Its tone is almost apologetic, and shows how assured of his honesty and truthfulness were those in the Province who knew Eden best. In reading their communication we constantly detect a feeling of shamefacedness, and are sure that they were asking his parole more to satisfy the more violent patriots of Baltimore than because they doubted him. They extend to him "ardent wishes for a speedy Reconciliation upon honorable and constitutional terms," though Bunker Hill had been fought ten months before. They acknowledge that they know of no information given, nor measures concerted by him, "injurious to this Province or America," and thank him for his resolution of continuing his station. They assure him that if he ever wishes to leave the province, every obstruction shall be removed, as far as their influence extends with the convention.

In regard to the mission of the committee to him, they hope "in Times of public Distress and Convulsion, when a free People are threatened with a deprivation of their civil Liberty, Exertions for its Preservation, influenced by the purest Principles and conducted with all possible Attention to Form and Ceremony, will not be considered as an Indignity or Insult to any Rank or Station in the Community."

Only "conjecture and apprehension of an injurious correspondence can be drawn from the intercepted letters," still the Council, entrusted with the public safety, thought they should pursue with vigilance all measures, "tho' the Dan-

[1] Maryland Archives I, p. 338.

ger to be guarded against may rest only in possibility." Personally, they "sincerely lament the Necessity of the Times, which forced us to a Measure so disagreeable to us, and which may prove an unmerited Treatment" of Eden; for they well remember "the friendly Disposition you have often manifested and the several favorable and impartial Representations you have made to Administration, of the Temper and Principles of the People of this Province."

Having sent this letter, as creditable to the good sense and calm judgment of the Council, as Eden's was to him, they write to the Maryland Delegates in Congress, telling the whole story and complaining of the "Indignity offered our Board by the Committee of Safety in Virginia and the Want of Confidence in the Baltimore Committee, to say Nothing more harsh." They "know of no good cause for this Insult, in passing us by, nor can they conceive what Motives could induce such Treatment."[1]

The next morning, Thursday, April 18, Lieutenant Plunket returned from Philadelphia, and brought the Baltimore Committee a letter from John Hancock,[2] dated April 16, stating that Congress had resolved that the person and papers of Governor Eden and of Alexander Ross be immediately seized and that they are to preserve secrecy as to the resolutions concerning Eden until executed by the Council of Safety. A copy of this letter was at once sent[3] to the Virginia Committee of Safety, with a very brief statement of what had been done and the assurance that the Council would probably execute the resolve of Congress as soon as it was received.

The Baltimore Committee also forwarded a letter[4] from Congress to the Council of Safety; but that body received it in no amiable mood. In addition to its previous causes of grievance, the instructions given by Purviance to Smith

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[1] Maryland Archives I, p. 341. American Archives IV, 5; 1561.
[2] Maryland Archives I, p. 361. Purviance, p. 192.
[3] Purviance, p. 193.
[4] Maryland Archives I, p. 361. American Archives IV, 5; 954.

had been received by the Council. They were indignant at the assumption of power therein contained, and now to be directed by Congress to take certain measures, two days after their own judgment had caused them to take other ones, was hard indeed to endure.

They wrote to their delegates:[1] "We consider the Congress as having the supreme Authority over the Continent, and look up to them with Reverence and Esteem; but that they cannot interfere with uncontroulable Power in internal Polity of this or any other Province." They considered the resolves such an interference, and drafted a letter to Hancock,[2] which "gave high offence to some of the very hot Gentlemen" in Congress, and upon which the Maryland Delegates expected a censure would be passed, though none actually came.[3]

The letter is stiff and uncompromising in tone, the feeling of State rights is to be read between the lines all through it; but for all that it is calm, deliberate and courteous. The truth was that Maryland was in the right, and she knew it. The Council informs Mr. Hancock:[4] "We were furnished with the intercepted letters some Time before the Receipt of yours, and had taken such measures as in our Judgment were competent to the Occasion. To dissolve the Government and subvert the Constitution, by the Seisure and Imprisonment of the Governor, we conceived to be a Measure of too much Delicacy and Magnitude to be adopted," without the advice of the convention. If the Governor would give them, as he had done, assurance that he would not leave before convention met, they saw no necessity urging them to immediate "anarchy and confusion." Under these circumstances, they cannot comply with the request of Congress, and they assure Hancock that they "are determined to maintain the Rights and Liberties of this Country at every

[1] Maryland Archives I, p. 355. American Archives IV, 5; 983.
[2] Maryland Archives I, p. 372.
[3] Maryland Archives I, p. 386.
[4] Maryland Archives I, p. 350.

Hazard of life and Property, and will vigorously procure every Measure which the defence of America shall require." They had proved the truth of this, for the arrest of Ross had been ordered on the preceding Monday, and had already been made.[1]

On Friday, April 19, the Council addressed a long letter to their delegates,[2] telling what had happened up to that date, and complaining bitterly of the treatment they have received from Virginia, Baltimore, and the Continental Congress. They are at a loss to know the cause of such treatment; they have cheerfully co-operated with and assisted the colony of Virginia, and have "considered the Interest and Security of Baltimore as essential to this Province." If Congress, which they feel would have acted differently had it possessed the same evidence as they, disapprove of the line of conduct they have adopted,[3] they intend "to call a Convention with all convenient Speed," and lay the whole matter before them. As to this point, they ask the advice of the delegates, being firmly persuaded, even at that late day, "that, if this Storm blows over, we shall continue to enjoy quiet sometime longer, if not the whole Campaign, and perhaps before another, all will be settled happily." They felt that part of the immunity of Maryland from the attacks which had been made upon Virginia was due to the representations made by Eden of their moderation, and they were impressed by the idea, so clearly seen in their letter to Hancock, that, while they preserved the form of the old government, even though all power had been taken from it, they had not broken with the old order of things. "If on suspicion only," they write, "we seize the Head of the Civil Government, all Commissions of Magistrates, Sheriffs and other Offices flowing from him must be at an end, and the Council of Safety have no power to fill the Vacancy—the convention have this power inherent in them, as Representatives of the

[1] Maryland Archives I, pp. 332, 352.
[2] Maryland Archives I, p. 354.
[3] Maryland Archives I, p. 355.

People, they have not communicated it to us, that we can find." They have not yet realized that a new government has already been established or that a new regime has been inaugurated; but, clinging to the past, and blinded to the fact that that past was rapidly receding from them, they cry out: "If the Governor is treated with ignominy and Rigour and laid under Arrest and guarded, &c., we cannot tell what will be the Consequences; this we are certain of, our Government will be shaken to its very Foundations, and in what Form it would be settled again, we know not." Does it seem that they were extraordinarily blind and unable to read the signs of the times? There were no keener men in that day. Rather is it a proof of the masterful tact of Eden, who yielded so gracefully that he seemed not to yield at all, who appeared to hold the reins of government still, although the spirited steeds had long been beyond his control.

That afternoon or the next morning came two letters[1] from the delegates at Philadelphia, telling of the proceedings there. When Hancock's letter reached Annapolis, one of the Council waited on Eden and told him that the Council thought Virginia and Baltimore were at the bottom of it; that they were satisfied with what he had said, and would not comply with the resolves.

The Council, now determined to vindicate its conduct, directed Mr. George Lux,[2] the clerk of the Baltimore Committee, to appear on Monday, the 22d of April, with all his papers, and the chairman of that committee, Mr. Samuel Purviance, and the deputy chairman, Mr. William Lux, to appear for examination at the same time.[3]

That same morning[4] Eden did one of the most thoughtful and disinterested things recorded of him. Having heard, as doubtless all Annapolis did, of the resolutions of Con-

[1] Maryland Archives I, pp. 347, 351.
[2] Maryland Archives I, p. 357.
[3] American Archives IV, 6; 731.
[4] Maryland Archives I, p. 357.

gress, and wishing to make the best return he could for the confidence reposed in him, he sent for Messrs. Charles Carroll, Barrister, John Hall, James Tilghman and William Paca, and voluntarily gave them his parole not to leave Maryland until the convention should meet. This parole, which he would have given on no "Requisition, however respectful, or your Representation of probably a more disagreeable Proceeding," he now gave, "as your Conduct towards me justly merits it, * * * that your personal Safety and future Respect from your Constituents" might be preserved. It was an act of rare magnanimity, and helps to show us why Eden was popular.

That same day was the beginning of evils for Purviance. He had hoped for glory and a reputation as an active zealous patriot, from his measures for the seizure of Eden. Instead, he received therefrom little but trouble and vexation, and probably was made heartily sick of his attempts to wield unauthorized executive power. On this day the Baltimore Committee met and asked Captain Smith to furnish them with his instructions.[1] When they had read them they enquired of each other if any of them had concurred in the instructions, and each denied it. They then sent to Purviance, and asked him on what authority he had given these instructions. He acknowledged that he alone was responsible for them, and promised to give a written statement on Monday morning. On that day, April 22, he presented his written statement[2] concerning the instructions, and expressed therein the hope that "the extreme Importance of the Occasion will at least palliate my offence in taking (what may be deemed by some) a very rash step, but which, I hope, the Necessity of the Case will justify me in to you and the Publick." The committee was probably a little touched in dignity because Purviance had taken this responsibility upon himself, and they saw clearly that those instructions, at any rate, were such as *they* had no power to give. So

[1] Maryland Archives I, p. 362.
[2] American Archives IV, 5; 1520. Maryland Archives I, p. 364.

they "highly disapproved"[1] of the conduct of the chairman, both because he had presumed to act "without their Concurrence and approbation," and, especially, because he acted in regard to matters "that so evidently do not come within their Jurisdiction." For this reason, also, they disavow and disapprove of the instructions to Captain Smith; but they trust "this well-meant Excess in so interesting a Crisis will find a more easy Pardon" than "a criminal neglect" or "a Timidity still more dangerous and blameable." This they say, being fully persuaded that Purviance was actuated by "uniform, warm and zealous Attachment to our distressed and perhaps betrayed country."

The citations before the Council were next taken up,[2] and the committee thought it expedient that they be obeyed, though they believe that "the Powers vested in the Council of Safety do not justify summoning a Member of the Committee" unless he has been guilty of trying to "disunite the People of this Province in their present Opposition, or to destroy the Liberties of America." Wm. Lux had already written[3] the Council that they could not well attend until Tuesday, April 23. When they did not then appear, the Council ordered their arrest.[4]

On that Monday, April 22, the Council wrote another long letter to the Maryland delegates. They inform them that, considering "the Authority of the whole Province trampled upon and insulted (if not conspired against) and finding the delegates think the same," they have called the convention to meet on May 7, that their conduct may be endorsed by it. They feel that they have pursued the correct course, and are convinced, from "his Declarations and Answers, and from his manner of behaving to us," that Eden will not leave.[5] "Little Minds might have been gratified with ac-

[1] Maryland Archives I, p. 365.
[2] Maryland Archives I, pp. 365, 366.
[3] Maryland Archives I, p. 366.
[4] Maryland Archives I, p. 372.
[5] Maryland Archives I, p. 369. American Archives IV, 4; 1010.

tual Imprisonment and further Severities," but they know that "we have all the Advantages we could have had, if we had committed him to the public Gaol, and we are persuaded many more." With Eden's permission they have examined his bureau and closet, and found several letters from him to England, in which he speaks favorably of Maryland. He has assured them that he has received no letters from the ministry but those they have seen. They have a consciousness of duty performed, but their characters have been blackened and insulted, and a copy of an anonymous letter traducing them has been refused them by Congress. Their deputies in Philadelphia have received a "grating insult" from Mr. Hancock in not admitting them to his presence, their "Province is the Object of Attention," and they fear they are to be plunged into all the Horrors of Anarchy, only to gratify a few individuals out of Congress. However, they are not disheartened, but will "still persevere in doing our Duty, with unremitting zeal, and will not fail to assist our Neighbours, if necessary."

On the morning of Wednesday, April 24, George Lux sent a letter,[1] stating he was ill, but had sent the papers requested, which were delivered to the Council of Safety by William Lux. Mr. Purviance was called up in the afternoon, told of the charges against him in regard to his conduct concerning the intercepted letters, and examined at some length.[2] The Council, on the morrow, wrote to the Deputies, that "he prevaricated most abominably,"[3] and his examination undoubtedly shows a lack of frankness.

As a result of his examination, Capt. James Nicholson, Maj. Mordecai Gist and Capt. Samuel Smith were summoned to appear on the following day. This they did, and were cautioned,[5] after examination, to be more on their

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[1] Maryland Archives I, p. 373.
[2] American Archives IV, 5; 1060. Maryland Archives I, p. 375.
[3] Maryland Archives I, p. 385.
[4] Maryland Archives I, p. 375.
[5] Maryland Archives I, pp. 386 to 392.

guard for the future and not to second the attempts of any one exceeding his power.

Purviance did not get off so easily. "Considering his Conduct and the high and dangerous Offence of assuming the supreme executive Power"[1] in Maryland, he is bound by a recognizance to the sum or £500 to appear before the convention. Here matters rested for the present. The Maryland Council had acted in a wise, dignified and moderate manner. They were actuated by the same spirit as Stone, who wrote Jenifer:[2] "I wish to conduct affairs so that a just and honorable reconciliation should take place, or that we should be pretty unanimous in a resolution to fight it out for Independence; the proper way to effect this is not to move too quick, but then we must take care to do everything which is necessary for our Security and Defence, not suffer ourselves to be lulled or wheedled by any deceptions, declarations or givings out. You know my hearty wishes for Peace upon terms of Security and Justice to America. But war, anything, is preferable to a surrender of our rights."

Purviance was not, however, without many friends.[3] Richard Henry Lee wrote him from Philadelphia: "If zeal in a good cause may not cover small irregularities or deviations from the strict line of office and regard for the public safety be chained to the letter of business, I fear such pedantic politics will ruin America." He gave him advice as to his conduct before the convention.[4] In Philadelphia, whither Jenifer had gone to look after affairs, Lee, with the "impudence and assurance of the devil," as Jenifer excitedly wrote to Carroll,[5] justified Purviance, denied that General Lee had directed the Governor to be seized and brought his brother Frank to confirm his statement. Jenifer, however, stood

[1] Maryland Archives I, p. 388.

[2] Maryland Archives I, p. 383. American Archives IV, 4; 1047.

[3] Purviance, pp. 194, 195, May 1, 1776. On May 28, R. H. Lee wrote to General Lee (Lee Papers II, 46), asking, "Is the Convention of Maryland a Conclave of Popes, a mutilated Legislature, or an assembly of wise men?"

[4] Purviance, p. 196. [5] American Archives IV, 5; 1146.

his ground, and "almost brought Lee to shame," while Col. Benjamin Harrison became so convinced of the justice of Maryland's cause that he wrote to the Virginia Committee of Safety "that they must apologize to the Council for the insult." In general, Jenifer found the Council "highly applauded" in Philadelphia for their "spirited conduct."

Gen. Charles Lee found criticism was being directed against him,[1] and wrote to Washington that the Marylanders "make a most damnable clamor" about his conduct, which was "not only justifiable in the eyes of God and man, but absolutely necessary."[2] He also wrote[3] to Hancock, justifying his course. Another letter[4] of his to Jenifer is somewhat apologetic in tone. He thinks, "when the circumstances are explained, that the censure will appear unjust, and that I was neither violent, assuming, nor precipitate." He thought, by seizing the Governor and his person, "the whole machinations of the ministry might be discovered." This must be done "with secrecy and expedition," and, as Lee imagined there were "no troops at Annapolis to execute the purpose," but knew there were soldiers at Baltimore, he addressed his letter there and to Mr. Purviance, inasmuch as there were no Continental officers in the vicinity. So far we feel his defence is weak, nor is the remainder stronger.

In regard to the charge that his intrusion into the affairs of Maryland was assuming and arrogant, because the State lay outside of his command, he states he "did not presume authoritatively to order, but as one servant of the publick, earnestly to entreat and conjure another servant, who alone appeared to have power to execute the plan." He rather sneeringly adds, that if councils must be held, before traitors

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[1] John Page wrote Lee a short account of the matter on April 28 (Lee Papers I, 457).

[2] He tries to divide the responsibility with the Virginia Committee of Safety. Letters dated May 10, Lee Papers II, 19. American Archives IV, VI, 406.

[3] Dated May 7. American Archives IV, 5; 1220.

[4] Dated May 6. Maryland Archives I, 410. American Archives IV, 5; 1222. Lee Papers I, 472.

be seized, he fears every traitor will escape, and concludes, with the assurance that what he did was done "in the character of a common, zealous member of the community, not of an officer."[1]

CHAPTER XIV.

The End of the Proprietary Government.

There was now a lull in the political storm until the convention met[2] on May 7, 1776. Two days later the proceedings of the Council were laid before it, and the next day a committee of three[3] was appointed to examine these. They reported that Purviance "hath usurped a power to direct the operations of the military force of this province;" that his letter to Captain Smith, in the name of the Committee of Observation, but without their knowledge, was a wrongful assumption of authority, and that his letter to Hancock "hath unjustly represented the convention and Council of Safety as irresolute and afraid to execute the trusts reposed in them, and endeavored to draw a suspicion upon them of a want of spirit and zeal in the execution of their duty."

On May 18 Purviance was heard[4] in his own behalf, and the report of the committee was adopted. Four days later he was called before the convention[5] and told that they "highly disapprove and condemn his conduct, in which they think he was considerably influenced by General Lee, a person having no interest nor property in Maryland, and, therefore, one whose interference in the domestic affairs of the Province is dangerous." After this ebullition of States Rights

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[1] Jenifer, in an important letter of July 17 (Lee Papers II, 141), resumed friendly relations with Lee, accepting his apologies and laying most of the blame on Purviance, whose meddlesomeness was, of course, more outrageous.

[2] American Archives IV, 5; 1579, ff.

[3] Jas. Hollyday, Robert Goldsborough and Thomas Johnson, Jr.

[4] American Archives IV, 5; 1586.

[5] American Archives IV, 5; 1590.

feeling, the resolves go on to state that while they intend to prevent no one from examining the conduct of the Government, nor from communicating his opinions, yet they cannot suffer themselves to "be wantonly and licenciously traduced." Purviance's letter could have done no good, if true, for Congress could not have removed the Council; but being false, might have "proved highly prejudicial." Yet, inasmuch as he has shown "active zeal in the common cause," and in the hope of his future conduct being more respectful and "more attentive to propriety," a censure and reprimand by the President from the chair is the only punishment inflicted on him. Eden and many others thought this very trifling punishment,[1] but it was probably as much as it was wise to inflict.

The day previous to this the convention had passed highly important resolutions in answer to the recommendation of Congress that the colonies adopt a form of government. Congress, in the preamble to these resolutions, stated that it was "now necessary that the exercise of every kind of authority under the said Crown should be totally suppressed and all the powers of government exerted under the authority of the people."[2] The Maryland Convention flatly denies this *ipsissimis verbis*.

They are very sore over the conduct of Congress in the matter of the intercepted letters; they are naturally conservative; they are still anxious to preserve the "ostensible form of government." They resent outside interference in their affairs, and resolve[3] that "the people of this province have the sole and exclusive right of regulating the internal government and police of this province." They are anxious to aid the common cause, and are willing "to enter into further compact with the other colonies for the preservation of the constitutional rights of America," but they are still, on this 21st of May, 1776, firmly persuaded that a "reunion with

[1] American Archives IV, 6; 736. [2] Convention Proceedings, p. 139.
[3] Convention Proceedings, p. 141.

Great Britain on constitutional principles would most effectually secure the rights and liberties and increase the strength and promote the happiness of the whole empire."[1] Consequently, they repeat to their deputies in Philadelphia the instructions formerly given them.

Eddis saw the trend of events more clearly than the convention, and wrote that, "however favorably they may be now disposed, they will not long be able to stem the torrent which in several provinces runs strongly toward independence."[2]

The convention next take up Governor Eden's letters,[3] and, after consideration, endorse the conduct of the Council. They do not find that Eden's "correspondence has been with an unfriendly intent, or calculated to countenance any hostile measures;" but they foresee future difficulties from the commands to Eden to "give facility and assistance," in every way, to the armament which Great Britain is to send. "If he remains in the exercise of the powers of Government, he must obey these instructions or hazard the displeasure of the King, which it cannot be expected he will do." If he go, however, and leave the President of the Council, Richard Lee, in charge of affairs, this difficulty will be avoided and the established form of government preserved, as the convention wish it to be. Consequently, it is to be "signified to the Governor that the Publick quiet and safety * * require that he leave the Province, and that he is at full liberty to depart peaceably with all his effects." All of these resolutions passed unanimously but the one concerning Eden's departure, on which the vote stood twelve counties to four.[4] A committee of five was now appointed to present

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[1] Lee Papers II, 46. R. H. Lee writes bitterly of this to General Charles Lee, and attributes it to "Proprietary machinations."

[2] Letters, p. 283.

[3] May 24. American Archives IV, 5; 1594.

[4] St. Mary's, 4 aye; Charles, 3 aye, 1 no; Calvert, 3 aye; Prince George's, 3 aye; Anne Arundel, 3 aye; Frederick, 3 aye; Baltimore, 3 aye; Harford, 3 aye; Cecil, 3 aye, 1 no; Queen Anne's, 3 aye,

these resolutions to the Governor, and with them an address, stating that the convention "entertains a favorable sense" of his conduct relative to American affairs, and "wishes for your return to resume the government of this province, whenever we shall happily be restored to peace and that connexion with Great Britain, the interruption and suspension of which have filled the mind of every good man with the deepest regret." Because of his endeavors "to promote the real interests of both countries," they trust that, on his return to England, he "will represent the temper and principles of the people of Maryland, with the same candor as" formerly, and will exert his efforts "to promote a reconciliation upon terms that may be secure and honorable" to both parties.[1] This is truly extraordinary language when we think that independence is only six weeks off. It shows the conservatism of the people and their love for their Governor.

But what followed is still more remarkable. The committee which waited on Eden not only delivered the address and resolution, but made a verbal proposal to him, in doing which they were doubtless sure of having their action indorsed by the convention, if necessary. They told him[2] that the convention intended "to preserve, as far as may be, the ostensible form of government, in hopes it may have some influence towards a reunion" with Great Britain. If commissioners from the latter come shortly, either "re-establishment of the old government or a total separation" will soon occur. The convention has "no doubt or suspicion" of the Governor's inclination, and request that he promise to take no "active hostile part, nor to correspond, directly or indirectly, with administration, or those who may

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2 no; Somerset, 2 aye, 1 no; Worcester, 2 aye, 1 no; Kent, 4 no; Dorchester, 4 no; Talbot, 3 no; Caroline, 1 aye, 2 no. Each county had four delegates.

[1] Proceedings of Convention, p. 152.

[2] American Archives IV, 6; 737.

be carrying on hostilities in America, until the result of the commissioner's embassy be known. If Eden "thinks himself at liberty to enter into such engagement, it is much the inclination of the convention that he should continue in the province in his station." This astonishing proposition, showing how full the confidence of the people was in the Governor, could not be accepted by him, as he thought it inconsistent with his duty to England. He therefore agreed to leave Maryland, as soon as an opportunity should offer. Eden further told the committee that, disagreeable as he found his situation to be, he should "still continue most sincerely to wish for the welfare and prosperity of Maryland, and, consequently, for a reconciliation with and constitutional dependency on Great Britain."[1]

The convention adjourned as soon as this matter had been disposed of, not expecting to meet again until August. On May 26 the Governor's boat, the *Friendship*, with Secretary Smith on board, went down the bay to see about getting a vessel for England. Eden wrote to Carroll,[2] suggesting precautions to avoid hostilities on that trip, and stating that he was "desirous to leave the province on the most friendly terms, and in as much peace as the times will admit." The *Friendship* reached the British fleet[3] on the 29th, and on the next day Secretary Smith received a letter for Eden, stating a ship will be sent to receive him, until passage can be obtained for England, and orders will be given to the ship to commit no hostilities.[4]

Commodore Hammond, the writer of the letter, greatly regrets Eden's departure, but is not surprised at it. It is true that "the Province of Maryland has hitherto been looked upon as having acted with a degree of moderation in the present unnatural Rebellion," and Hammond "had some expectation" that Eden "might have been able to convince the

[1] Passports were prepared for Eden on May 25.
[2] American Archives IV, 6; 738.
[3] Maryland Archives I, p. 453, American Archives IV, 6; 612.
[4] American Archives IV, 6; 617; Maryland Archives I, 459.

people of the impossibility of their succeeding;" but since he had "certainly now given this a very fair trial, and it is become apparent that the matter can only be settled by force of arms," nothing would be gained by a longer stay, and Eden would only be exposing himself to insults.

This letter was brought to Annapolis on May 31 and shown by Eden to the Council,[1] who sent a circular to the militia officers not to be alarmed at the sight of vessels, nor to attempt to attack them. They have "the strongest assurances that the Governor will leave the province with the most friendly regard for its inhabitants, and will do everything in his power that may contribute towards promoting a reconciliation between the Mother country and her colonies." So they write on the 3d of June, but long ere Eden reached England they had declared Maryland independent. On June 7 the Governor called his Council[2] together and gave them a narration of events. On June 12 they again met for the last time. They then ordered that writs for a new Legislature be issued, and decided not to close the Land Office,[3] as was desired by the guardian of the Lord Proprietary, until certain litigation be concluded. Then they adjourned forever, and the Upper House of the Colonial Legislature passed away.

On the next day the Governor issued the writs for a new Assembly to meet on July 25. It was his last official act, and on the 25th of June the convention resolved that the writs be not obeyed,[5] and no election be held. The action of the convention in regard to Eden had not given universal satisfaction. The Upper District of Frederick County on June 29 condemned the "adulatory address."[6] "An Ameri-

[1] Maryland Archives I, p. 458. American Archives IV, 6; 682.

[2] Benedict Calvert, Dan'l Dulany, John Ridout, Daniel of St. Thos. Jenifer, Wm. Hayward, P. Thos. Lee, Benj. Ogle.

[3] American Archives, IV, VI, 740. It was not closed for nearly a year.

[4] American Archives IV, 6; 821.

[5] American Archives IV, 6; 1047.

[6] American Archives IV, 6; 1130.

can" issued an address to the people, stating[1] that "the transactions of the convention relative to Governor Eden have given great disgust in this and our sister colonies." But the Virginia Convention was the most prominent complainant.

On May 31 they passed resolutions[2] which tended still more to irritate the States Rights feelings of Maryland. These resolutions condemn those passed by the Maryland Convention, complain of the reasons assigned for suffering Eden to go as insufficient, cry out that Maryland has permitted Eden's "passage to promote our destruction," and that, by the address, Eden may assume in Great Britain "the character of a public agent, and, by promoting division and disunion among the colonies, produce consequences the most fatal to the American cause." The Virginians little knew the temper of Eden and of the Marylanders,[3] and their last sentences were justly offensive: "We cannot avoid imputing these proceedings to some undue influence of Governor Eden under the mask of friendship to America and of the Proprietary interest in Maryland, whereby the members of that convention were betrayed into a vote of fatal tendency to the common cause, and, we fear, to this country in particular, and feel it an indispensable duty to warn the good people of that province against Proprietary influence." These resolutions, we are told by Eddis,[4] operated "with great force on the minds of the multitude, and there are some who publicly avow their opinion that the community at large are not bound to yield their assent to any proceedings of delegates which may be prejudicial to the general interests." It was even feared that some violent measures might be taken to detain the Governor, an association in Baltimore,

[1] American Archives IV, 6; 1096.

[2] American Archives IV, 6; 629.

[3] Gen. Chas. Lee, on June 29, wrote to Benjamin Rush (Lee Papers II, 96). "What poor mortals are these Maryland Councilmen! I hope the Congress will write a letter to the People of that Province at large, advising 'em to get rid of their damn'd Government. Their aim is to continue feudal Lords to a Tyrant."

[4] Letters, p. 291.

known as the Whig Club, loudly proclaiming the absolute necessity of seizing him as a pledge for the public safety.[1]

Eden, though rather anxious for the arrival of a ship,[2] conducted himself "with the utmost coolness and fortitude," and to all appearances completely relied on the assurances of the convention.

The Council was extremely indignant.[3] They wrote to the deputies in Philadelphia that they feared interruption to the Governor's passage from Virginia, whose "intention is to stir up the people against the powers now in being." They speak of the matter with considerable bitterness, and state that they, after returning a short answer,[4] intend to leave the matter to the convention.

Going ahead of our story in point of time, we find that on July 6 the convention resolved[5] that the Virginia resolutions were hasty and betray a disposition to interfere, which might have proved highly injurious by infusing groundless jealousies. This convention has never meddled with Virginia, was the only judge of the propriety of her conduct, and possessed evidence which Virginia did not have. They state that they presented the address to Governor Eden, as a testimony due to "his fair and impartial representations of the principles, motives and views of the people of this Colony," and that they must vindicate themselves from the attempt of Virginia to appeal to the people of Maryland against the convention and to hurt Maryland in the good opinion of the United Colonies.

The convention reassembled at the call of the Council on June 21, 1776. A great change had come over popular sen-

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[1] Eddis Letters, p. 303.

[2] Eddis Letters, p. 307.

[3] Maryland Archives I, 470.

[4] In Maryland Archives I, 483, ff., is found printed a long letter from Chas. Carroll, Barrister, to Wm. Hayward, giving his view as to what the answer to Virginia should be.

[5] American Archives IV, 6; 1505.

timent[1] since last they met, and Maryland was now nearly ready for independence.

On the evening of the next day His Majesty's ship, *Fowey*, Capt. George Montagu, arrived at Annapolis[2] to carry away the last Proprietary Governor of Maryland. All felt the times were dangerous and unsettled, and as Eddis tells us,[3] "the warmest attachments" were "obliterated by the malignant influence of political contention." The Governor still appeared "easy and collected," and was "treated with every exterior mark of attention." Eddis felt certain that "the consistency and propriety of his conduct in many trying and peculiar situations will be long remembered with sentiments of esteem and gratitude," but was very anxious to see the Governor safely embarked and out of danger of a possible imprisonment.

On the 23d Montagu notified[4] Eden that he had arrived under a flag of truce, and was ready to take him off. Eden at once boarded the ship, leaving his baggage until morning. The Council of Safety, rejecting the advice of the more headstrong patriots to detain Eden, took an affectionate leave of him, after which he was conducted to the barge with every mark of respect. His last act before embarking was to urge Eddis to remain at his post in the Loan Office till superseded by some permanent authority.[5]

Unluckily, seven white servants and a deserter from one of the militia companies found means to escape that night, and were received on board the *Fowey*.[6] They were soon discovered, and the next morning a letter was addressed to

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[1] According to tradition, largely due to Chase's efforts.

[2] Maryland Archives I, pp. 510 and 511. American Archives IV, 6; 1034.

[3] Letters from Am., pp. 310, 311, June 11, Samuel Smith sent letters from prisoners to England to Eden to have them taken by him. American Archives IV, 6; 806. Maryland Archives, I, 477.

[4] Maryland Archives I, 510, 511. American Archives IV, 6; 821.

[5] Eddis, p. 313.

[6] Maryland Archives I, 514.

Captain Montagu by the Council of Safety,[1] requesting that the runaways be returned, and that any who might escape in the future be not received. They also wrote to Eden,[2] asking him to use his good offices with Montagu to have the fugitives returned, and promising, in that case, as they had promised Montagu, to observe the truce. A British ship might well have kept the deserter from a possible vengeance, but it is difficult to see on what justifiable ground a request could be refused for the return of runaway servants. It was refused, however, for Montagu wrote[3] that his orders were "peremptory to receive all persons well affected and give them every protection." He would not send back the servants to a "severe and ignominious servitude." Eden's influence was so little that he was forced to answer the Council "that every exertion of my interest or interposition on this subject must prove ineffectual against the King's orders." He hopes they will not detain his baggage, and expresses a wish of "peace and prosperity to the province on constitutional principles."[4]

The Council was not at all satisfied with Montagu's answer, and sent word at once to the various officers that he had broken the truce.[5] The Convention, on the same day, passed resolutions that the correspondence between the Council and Montagu be published, that the truce was to be considered as broken, and that intercourse with the *Fowey* should cease at once.[6]

The next day Montagu sent[7] to know why the Governor's baggage was not sent on board, and told the Council that, if it were detained the truce would be broken. To this Jenifer

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[1] Maryland Archives I, 513.
[2] Maryland Archives I, 513.
[3] Maryland Archives I, 515. He said he would not receive runaway slaves.
[4] Maryland Archives I, 514.
[5] Maryland Archives I, 513.
[6] American Archives IV, 6; 1044.
[7] Maryland Archives I, 518. American Archives IV, 6; 1489, 1115.

answered that the truce was already broken by Montagu's action, and therefore the baggage was detained.[1] The Council of Safety ordered that the provincial arms and accoutrements be delivered to Colonel Smallwood and troops be disposed in fit places on the shores of the bay to repel any landing the *Fowey* might intend.[2]

The people were extremely irritated at this incident, and the royalists thought it had much to do with weakening the conservative force that had "hitherto restrained the impetuosity of the popular zeal."[3] Montagu thought it useless to wait longer for the delivery of Eden's baggage, and so "broke ground" on the morning of June 26 and took away the last Provincial Governor of Maryland. On the way down the bay some gentlemen from Oxford took on board the *Fowey* "several head of sheep and hogs; some as a present to the Governor, and others for sale."[4] It was a parting token of respect, not without risk to the givers, who were arrested therefor and made to appear before the convention. This body, however, discharged them, as they showed clearly that they did not know the truce had been broken when they went on board the *Fowey*.[5] It was most unfortunate that Eden's departure should have left bitter feelings in the hearts of so many[6] especially since it was from no fault on his part.

On July 17, Jenifer, in a letter to Charles Lee,[7] states "that the people of Maryland, though the last on the Continent to declare independence, will go as far as any colony towards the general defence of the United States. Peace

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[1] Robt. Smith, Maryland Archives I, 516.

[2] Maryland Archives I, 517.

[3] Eddis, p. 316.

[4] Maryland Archives I, 529. American Archives IV, VI, 1091.

[5] American Archives IV, 6; 1495.

[6] Jenifer, on July 17 (Lee Papers II, 141), wrote to Gen. Charles Lee: "Governor Eden's behaviour after he went on board the Fowey justified, in a great degree, your sentiment of his being seized."

[7] Lee Papers II, 142.

would have been their choice, but as that could not be had consistent with their safety, they will risque everything before they will submit." It is two weeks since the Declaration of Independence, and yet Jenifer, one of the leaders of the new State, goes on to say: "I am still of opinion that it is our Interest to be united with Britain, and that our Province instructed its Delegates to agree to unite with the other bodys in declaring independence too soon. * * It is better that the people at large should be before their Rulers, than their Rulers to be before them." It was such sentiments as this that enabled even one so popular as Eden to keep his position so long.

Eden believed in Maryland's loyalty until the end, and wrote his brother William, on July 1, that he left "a Province personally much attached to him and loyally disposed to his Majesty's Government, but unable to protect either their Governor or themselves from their own armed factions or from their Rebellious neighbours." He left no vestige of Proprietary Government, save Eddis and Clapham in the Loan Office, and the officials in the Land Office.

The Land Office, concerning which so much controversy had arisen during Eden's administration, was presided over by two judges, Benedict Calvert and George Steuart. Whether it were a public or private office was by no means easy to decide. The learned Kilty, writing thirty years later, says that "the very nature of the Land Office in Maryland has been as equivocal as its rules have been obscure."[1] As a proof of this, he points to the fact that the Proprietary officials therein continued to exercise their functions until May 15, 1777. Warrants and patents under the authority of Henry Harford, Lord Proprietary of Maryland, were issued up to that time, and Kilty well says[2] that "nothing proves the singular and disputable character of this establishment more than that patents should have continued to

[1] Land Holders' Assistant, p. 257.
[2] Land Holders' Assistant, p. 279.

issue therefrom, signed by the President of the Proprietary's Council, with the addition of commander-in-chief in and over the *province* of Maryland; for nine or ten months after the name and *subordinate* nature of a province had been solemnly renounced in the Declaration of American Independence, and even after there were actually a Governor and Council elected, qualified and acting under the State Constitution." We may add, nothing shows more clearly the moderation of the colonists nor the conservative character of the Revolution in Maryland.

CHAPTER XV.

Later Years.

Eden could not get transportation to England at once. He was compelled to learn that Maryland had declared herself independent, while he was still on Lord Dunmore's fleet. He was on the *Levant*, a store ship, on July 10, having left the *Fowey*, and was reported to have nothing to do with the management of the fleet.[1]

He was still in the Chesapeake as late as the end of July, nor do we know when he sailed thence. His last act of which we have record, before leaving America, was to use his influence to secure permission for one Daniel Wolstenholme, a non-associator, to go back to England. It was a characteristic kindly act of a kindly man.[2]

With it he vanishes out of our sight. Where he was or what he did in the next seven years is almost absolutely unknown. We catch one glimpse of him in a letter written by him to Walter Dulany, a fellow-exile from Maryland, from Bangor Place, on August 15, 1777. He tells Dulany that he expects to leave that place soon "on the Ramble for

[1] Maryland Archives II, pp. 24, 43, 74, 81. July 9, his brother William wrote asking that a royal ship stop at Annapolis to permit Eden's family the opportunity of communicating with him.

[2] Maryland Archives II, pp. 87, 99, 100, 102, 104, 139, 149.

a fortnight, and then to Durham, and then to arrive in London again in the beginning of October."

Whether he stayed in England and watched the progress of the war from afar, or came back in the company of his brother, Sir William Eden, later Lord Auckland, one of the commissioners of peace, I have been unable to discover.

We have already quoted the opinion of Eden held by McMahon, who knew many of those who had been contemporaries with him, and we have seen what were the historian's views as to the Governor's character and popularity. These views were generally held. Eden was esteemed in the province he governed because of his rare tact and ability. He continued to receive the same high esteem in England, and soon found honors at home. Scarcely had he arrived in England, when, on September 7, Lord George Germain informed him of "the King's entire approbation" of his conduct in his Governorship and of his supporting his authority "under difficulties which were thought here to be insurmountable," as well as for "the judicious manner" in which Eden left his province when his "staying there was no longer practicable." In addition to this formal approbation, as a reward for such faithful service, King George III created Robert Eden of Maryland a Baronet. Eden at once replied to this letter, gratefully accepting the proffered honor, and professing that "this Favor can only add gratitude to zeal in my future endeavors to promote His Majesty's service, to the utmost of my abilities, on every occasion, wherein His Majesty may think proper to employ me." From September 10, the official date of the creation, he and his heirs male were to bear the dignity of Baronets.

Though we do not hear of Eden's activity during the next seven years, no sooner was the treaty of peace declared than he returned to Maryland, in the endeavor to regain some of the property he left here.[1]

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[1] Proceedings of Assembly Nov. 1783, p. 26, R. Smith, late Sec. to Gov. Eden, to have chest of books for the Governor.